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No. 745

Office Supreme Court, U.S.
FILED
MAR. 3 1959
JAMES R. BROWNING, Clerk

No. 12399

In the

United States Court of Appeals

For the Seventh Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
PAUL DE LUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, District Judge.

Appendix for Defendant - Appellant

IN THREE VOLUMES

Volume I—Pages 1 to 244

Index in this Vol. I

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Volume I—Pages 1 to 244

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IN THE

United States District Court

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA *vs.* PAUL DE LUCIA, also known as PAUL RICCA, also known as PAUL SALVI; and JOSEPH IMBURGIO BULGER	No. 57 CR 154 (Vio.: Section 145(b) Internal Revenue Code of 1939; 26 U.S.C. 145(b). Section 7201 Internal Revenue Code of 1954; 26 U.S.C. 7201. Section 371, Title 18, United States Code.)

Prefix to Record

1A

Above is a caption exhibiting the proper style of the trial court and the title of the case. The suit was commenced by the return and filing of an indictment consisting of four counts on March 4, 1957. The original parties were—United States of America *vs.* Paul De Lucia, also known as Paul Ricca, also known as Paul Salvi and Joseph Imburgio Bulger. De Lucia and Bulger were acquitted by verdict and judgment entered May 29, 1958 as to the fourth count. Bulger was named only in the fourth count so this acquittal finally disposed of the case as to Bulger. De Lucia was the only defendant named in the first three counts. On May 29, 1958 the jury returned separate ver-

dicts each finding DeLucia guilty as charged in the first three counts. Sentence was entered on the first three counts on June 12, 1958. The offense was violation of the Internal Revenue Code, three years and a fine of $5000 on each count, sentences to run consecutively and fines cumulative. Upon the return of the indictment De Lucia surrendered in open court and furnished a surety bond as required for $10,000, which bond has been allowed to stand pending appeal. The trial commenced on May 5, 1958 and was tried with a jury before Judge Julius Miner and has been fully reported in a complete transcript prepared by Roy E. Fuller the official reporter. The Government has a copy of said transcript. The original exhibits have all been ordered certified to the United States Court of Appeals, Seventh Circuit. A notice of appeal was duly filed on June 17, 1958. Notice has been given and the Clerk has been directed to furnish a complete record to include the transcript of all the evidence and all proceedings had in the case.

3A Placita June 1958 Term March 4, 1957.

Indictment

57 CR 154

THE DECEMBER GRAND JURY CHARGES:

That on or about the 1st day of September, 1954, and on or about the 19th day of November, 1954, in in the Northern District of Illinois, Eastern Division,

PAUL DE LUCIA, also known as
PAUL RICCA, also known as
PAUL SALVI,

defendant herein, who during the calendar year 1948 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1948, by making and causing to be made false statements and representations at a hearing and conference in Chicago, Illinois, on September 1, 1954, before Special Agent Thomas N. Smith, Special Agent Richard F. Stonesifer, and Special Agent John A. Scholz, who were officials and representatives of the United States Treasury Department, Internal Revenue Service, and by making and causing to be made false statements and representations at a hearing and conference in Chicago, Illinois, on November 19, 1954, before Assistant Regional Counsel Joseph B. King, Technical Advisor William M. Ruggaber and Special Agent Thomas N. Smith, who were officials and representatives of the United States Treasury Department, Internal Revenue Service, which said false statements and representations concerned the existence of a cash hoard in the amount of Three Hundred Thousand Dollars ($300,000.00), allegedly kept by the said defendant in his home at 812 Lathrop Avenue, River Forest, Illinois, from December 25, 1943 until a date subsequent to August 13, 1947, and which said false statements and representations were made and caused to be made for the purpose of concealing additional unreported net income received by the said defendant during the said calendar year 1948, on which said unreported net income, as the defendant then and there well knew, there was due and owing to the United States of America a tax of $75,201.14.

In violation of Section 7201 of Internal Revenue Code of 1954; 26 United States Code 7201.

COUNT TWO.

THE DECEMBER 1956 GRAND JURY FURTHER CHARGES:

That on or about the 1st day of September, 1954, and on or about the 19th day of November, 1954, in the Northern District of Illinois, Eastern Division,

PAUL DE LUCIA, also known as,
PAUL RICCA, also known as
PAUL SALVI,

defendant herein, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1949 by making and causing to be made false statements and representations at a hearing and conference in Chicago, Illinois, on September 1, 1954, before Special Agent Thomas N. Smith, Special Agent Richard F. Stonesifer, and Special Agent John A. Scholz, who were officials and representatives of the United States Treasury Department, Internal Revenue Service, and by making and causing to be made false statements and representations at a hearing and conference in Chicago, Illinois, on November 19, 1954, before Assistant Regional Counsel Joseph B. King, Technical Advisor William M. Ruggaber, and Special Agent Thomas N. Smith, who were officials and representatives of the United States Treasury Department, Internal Revenue Service, which said false statements and representations concerned the existence of a cash hoard in the amount of Three Hundred Thousand Dollars ($300,000.00), allegedly kept by the said defendant in his home at 812 Lathrop Avenue, River Forest, Illinois, from December 25, 1943 until a date subsequent to August 13, 1947, and which said false statements and representations were made

and caused to be made for the purpose of concealing additional unreported net income received by the said defendant during the said calendar year 1949, on which said unreported net income, as the defendant and there well knew, there was due and owing to the United States of America a tax of $17,589.54.

In violation of Section 7201, Internal Revenue Code of 1954; 26 United States Code, Section 7201.

COUNT THREE.

THE DECEMBER 1956 GRAND JURY FURTHER CHARGES:

That on or about the 5th day of March, 1951, in the Northern District of Illinois, Eastern Division,

PAUL DE LUCIA, also known as
PAUL RICCA, also known as
PAUL SALVI,

defendant herein, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that they had a net loss for the said calendar year in the amount of $9,838.82 and that no tax was due and owing to the United States of America; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $79,460.23, upon which said net income there was owing to the United States of America an income tax of $35,555.88.

In violation of Section 145(b), Internal Revenue Code of 1939; 26 United States Code, Section 145(b).

COUNT FOUR.

THE DECEMBER GRAND JURY FURTHER CHARGES:

That from on or about September 1950, and continuing until the date of the return of the indictment herein, at Chicago, Illinois in the Northern District of Illinois, Eastern Division,

PAUL DE LUCIA, also known as
PAUL RICCA, also known as
PAUL SALVI; and
JOSEPH IMBURGIO BULGER,

defendants herein, unlawfully, wilfully, knowingly and feloniously did conspire, combine, confederate and agree together to commit an offense against the United States of America, to wit, to knowingly and wilfully make false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of a department and agency of the United States, to wit, the United States Treasury Department, Internal Revenue Service, in violation of Sections 2 and 1001, Title 18, United States Code; and in furtherance of which, to effect the object of said conspiracy, the defendants did and performed the following overt acts:

OVERT ACTS.

1. That PAUL DE LUCIA, also known as PAUL RICCA, also known as PAUL SALVI, defendant, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, on or about September 1, 1954, was present in the office of the Intelligence Division, Internal Revenue Service, during a conference at which there were present, in addition to himself, the following, to wit, Special Agent Thomas N. Smith, Special Agent Richard F. Stonesifer, Special Agent John A. Scholz, Attorney William Scott Stewart, and Attorney Eugene Bernstein.

2. That JOSEPH IMBURGIO BULGER, defendant, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, on or about November 19, 1954, gave testimony in the office of the Regional Counsel, Internal Revenue Service, in the presence of Assistant Regional Counsel Joseph B. King, Technical Advisor William M. Ruggaber, Special Agent Thomas N. Smith, and Attorney Eugene Bernstein.

In violation of Section 371, Title 18, United States Code.*

Returned March 4, 1957.

12A Plea of not Guilty, entered as to each defendant.

20A Preliminary Proceedings filed, motions, supporting affidavit and brief.

---

* Line numbers have been added for convenience in reference.

Motions, Supporting Affidavit, Brief and Argument.*

1 **Challenge To Array of Grand Jury.**

* * *

3 **Motion to Inspect Grand Jury Minutes**

* * *

Motion of Defendants to Dismiss Indictment.

Now come the defendants Joseph I. Bulger, and Paul DeLucia and move to dismiss the indictment herein, and each count thereof, and for reason therefore, state:

Indictment Vague and Indefinite.

4 8. The said indictment, and each count thereof, fails to inform the defendants of the nature and cause of the accusations with the certainty required by law.

9. That said indictment, and each count thereof, fails to charge or aver the commission of acts by these defendants constituting any offenses against any statute of the United States, with the certainty required by law.

10. The allegations of the indictment, and each count thereof, are so uncertain and indefinite that they violate the requirements of the Fifth and Sixth Amendments of the Constitution of the United States of America.

11. The indictment, and each count thereof, violates the provisions of Rule 8 of the Federal Rules of Criminal Procedure.

* * *

* These motions etc. were printed (blue cover) for the trial court, which volume has been included in the record made by the Clerk of the District Court.

16. That nowhere in the indictment is it shown in what respect the alleged false statements were false and the indictment does not charge sufficiently any act of concealment, trick, device, or scheme that was false, fraudulent or fictitious; nor does it charge in what respect the alleged concealment, trick, device, scheme or false and fraudulent representations were material.

17. It is not alleged in the indictment or any count thereof, that the offenses charged in the indictment are based on the same act or transactions.

18. It is not alleged in the indictment or any count thereof, that the offenses charged in the indictment are based on two or more acts or transactions connected together or constituting charges of a common scheme or plan.

Misjoinder of Offenses.

19. There are joined in one indictment offenses charged to have been committed by the defendant Paul DeLucia independently of the offenses charged to have been committed by the defendant Joseph I. Bulger.

20. There have been joined in one indictment offenses charged to have been committed by the defendant Joseph I. Bulger independently of the offenses charged to have been committed by the defendant Paul DeLucia.

21. Separate crimes charged to have been committed by the defendants independently of each other are joined in one indictment.

22. The charges contained in the various Counts of the indictment against the defendant DeLucia are dependent upon different proof than the charges contained in the count against the defendant Bulger.

23. There has been an improper joinder and consolidation of charges against the defendant Paul DeLucia, as set forth in Counts 1, 2 and 3 of the indictment, with the charges contained in Count 4 of said indictment.

7 24. Separate crimes alleged to have been committed by the defendants independently of each other are improperly joined under one indictment, contrary to law and to the Federal Rules of Criminal Procedure.

(a) Counts 1, 2 and 3 charge offenses against the defendant Paul DeLucia which offenses are different, distinct and separate offenses from those charged against both defendants in Count [illegible]

25. The indictment, by reason of the misjoinder of the offenses and a misjoinder of the defendants, tends only to confuse each defendant and must be confusing to the Court as to the exact nature of the charge.

* * *

The defendants respectfully move that Your Honor hold that there has been a misjoinder of offenses as being not of the same or similar character or based on the same act or transaction. Nor does it appear that there are two or more acts or transactions connected together or constituting parts of a common scheme or plan. The defendants move for such order as Your Honor may deem proper.

Misjoinder of Defendants.

* * *

8 29. The crime charged against the defendant DeLucia in the respective counts of the indictment are of such a nature that the jury might regard one as corroboration of the other. The crimes charged against the defendant DeLucia in Counts 1, 2 and 3 are separate and distinct from the charges against the defendant, Bulger.

30. The defendant DeLucia will be prejudiced in his defense and deprived of a fair trial if tried jointly for the reasons appearing herein.

31. Counts 1 and 2 of said indictment violate the appli-

cable rules. There has been misjoinder of defendants. The defendants are not alleged to have participated in the same act or transaction nor in the same series of acts or transactions. The defendants move for such order as to Your Honor may seem just.

Relief from Prejudicial Joinder

32. Each defendant respectfully represents that from the record and the supporting affidavit that each is prejudiced by a joinder of offenses and of defendants and each defendant moves that Your Honor grant a severance of defendants. Also an election between counts is requested. The defendants pray for such order as to your Honor may seem just.

Duplicity

9 33. Counts 1 and 2 of said indictment violate the 5th and 6th amendment to the Constitution of the United States and Rule 7C and Rule 8A and B Federal Rules Criminal Procedure in that a number of separate offenses are charged in said counts 1 and 2, namely, evasion of in violation of Section 7201 of the Internal Revenue Code; separate and distinct false statements and representations on September 1, 1954 and November 19, 1954, all in violation of Section 7201 of the Internal Revenue Code of 1954. The alleged making of said false statements does not violate Section 7201 of the Internal Revenue Code of 1954. Counts 1 and 2 are duplicitous, in that they attempt to charge the defendant, DeLucia, with a number of crimes. It is not clear from a reading of said counts just what crime is intended to have been charged.

34. If DeLucia be charged with the crime of evading income tax due during the calendar years 1948 and 1949, the Statute of Limitations has run against said alleged /

crimes. If counts 1 and 2 attempt to allege the crimes of evading income tax during said calendar years in violation of Section 7201 of the Internal Revenue Code of 1954, DeLucia could not have violated said Section in the years 1948 and 1949. Section 7201 of the Internal Revenue Code did not become effective until August, 1954.

The defendants move to dismiss the indictment on the ground that it is duplicitous.

Materiality

35. The indictment does not charge that the statements said to constitute an offense against the United States apertained to any income tax due and owing to the United States or to any other matter which could be said to be material.

36. There was no testimony before the Grand Jury upon which the Grand Jury could possibly ascertain the truth or falsity of any statement or statements made by Joseph I. Bulger to a department or agency of the United States.

37. There are no allegations in Count 4 of said indictment that the statements alleged to have been made were material to the offenses alleged in Counts 1, 2 and 3.

38. In order that a false statement be material and within the jurisdiction of the department or agency the indictment should allege facts such as an allegation that income tax was due the United States.

Motion to Strike Overt Acts

39. The defendants move to strike the allegation of overt acts from the fourth count, on the ground that they show on their face to be immaterial, repugnant and not connected with any conspiracy.

Motion to Strike Aliases

40. The defendants move to strike the aliases from the indictment. The true name of each defendant was well known to the prosecutors and the Grand Jury. The aliases were included for the purpose of creating prejudice before the trial jury.

Motion of Defendant Joseph I. Bulger for a Separate Trial.

* * *

Motion of Defendant Paul DeLucia for a Separate Trial.

56. Based upon the same affidavit and for like reasons Paul DeLucia hereby moves for a severance.

Paul DeLucia, Defendant.

Motion For Bill of Particulars.

If the indictment be not dismissed, each defendant moves Your Honor to direct the filing of a bill of particulars. Cause is shown by the record and the supporting affidavit. Some of the information sought by a bill of particulars is as follows:

57. In count one, the date of the crime is stated as on or about specified dates. What date is claimed?

58. The indictment, count one, alleges that DeLucia attempted to evade. What do you mean by attempt? What did he do? Did he fail in his attempt or was he prevented?

59. Do you intend to prove an attempt or do you intend to prove a completed crime of defeating taxes?

60. Count one alleges that DeLucia made and caused to be made false statements. Where and when did he make false statements and what were they? Whom did he cause to make false statements? Where and when were they made? As to these statements made by him

and caused to be made, what was false about them and how did it matter what was said or represented? How were they material? Do you intend to prove both making and causing? If only one, please identify and so state.

61. Count one alleges that there was a conference. How did DeLucia figure or have anything to do with any conference. Where and when was it held and what was it about? Is it not a fact that the only appearance made by DeLucia before the agents named was on September 1, 1954, when DeLucia responded to a request to appear contained in a letter? How do you expect to prove that this constituted the making of false statements? Is it not a fact that DeLucia said nothing at that conference and it was understood that that said by others there was not to bind DeLucia?

15 62. The indictment, count one, alleges that DeLucia made and caused to be made false statements on November 19, 1954. Did DeLucia make any statement on that day, if so what was it? Is it not a fact that Joseph Bulger testified on that day and he was the only witness?

63. Does the photostat of the transcript of Mr. Bulger's testimony submitted to the Court with these motions correctly reflect and report the testimony of Mr. Bulger? If so, point out that which you claim to be false and tell how you expect to prove that the claimed falsity was material, if you make such claim?

64. Do you intend to prove or claim that that said by the lawyers in this conference constituted false statements? If so, please specify which statements made by lawyers were false. Do you claim that the lawyers, or either of them were engaged in a conspiracy?

65. The indictment, count one, alleges that false statements were made for certain purpose. Tell us if such purpose was accomplished. How could false statements in 1954 accomplish the alleged purpose concerning 1948 taxes?

66. It is alleged in count one that DeLucia made and caused these false statements to conceal additional unreported income. Additional to what? Do you claim that DeLucia did have unreported net income? Tell us enough to prepare our defense including the claimed source of this income, the amount and how you expect to establish the fact? Do you expect to make use of the net worth method? If so, tell us some facts you expect to prove in order to establish a base. What do you claim as the net worth of DeLucia at the beginning of 1948? At the end of 1948? What do you claim he spent in 1948? What do you expect to establish from his books if anything for 1948? Do you intend to prove that his books are not correct or are inadequate? If so give particulars. Do you intend to prove
16 that he failed to report specific items of income for 1948? If so give us a statement of the dates and amounts and identify. Do you expect to prove expenditures in excess of income? If so are these reflected in the books? If not in the books what are they? Do you intend to prove any source of income during 1948? If so what? Same as to 1949? As to 1950? What was the date of filing of the return for 1948? 1949? 1950? Has not the statute of limitations run? Do you expect to prove an attempt only or a completed evasion? What statute do you claim was violated by the crime alleged in count one? How was the statute violated? What act or acts of DeLucia do you expect to prove in order to show violation of the statute designated by you? What section of the statute was violated?

67. Count one alleges that false statements concerned the existence of a cash hoard for the purpose of concealing additional unreported net income during 1948. How were the false statements material? What difference did

it make to anybody whether the hoard existed or not? If claimed to have made a difference explain enough to inform what the charge means

Count Two

68. As count two appears to follow the language of count one for the year 1949, please cover the ground suggested by our questions as to count one.

Count Three

69. What did DeLucia do in order to attempt to evade part of his taxes? Which do you expect to prove an attempt or a complete crime of evasion and defeat? Has not the Statute of Limitations run? Did he actually succeed in evading and defeating? If he did not, why not? Did he fail or was he prevented?

17 70. Count three alleges the filing of a false return. When was this return filed? In what detail was the return false? What section of the statute do you claim was violated?

71. Count three alleges that the return was false and fraudulent. Give us the facts. How was it false? How was it fraudulent? How do you expect to prove this allegation? Please follow the questions put as to count one and furnish same information as to count three.

Count Four

72. When did the conspiracy begin? How do you expect to prove that this was a continuing conspiracy? What was the offense against the United States that the defendants conspired to commit? Did they commit the offense and if so where and when and how?

73. The indictment, count four alleges a matter within the jurisdiction. What matter? How did the Treasury Department acquire jurisdiction? What were the false

statements? How were they fraudulent? What was fictitious? Did anyone rely upon the statements? If, so, who, when and where? Was anybody or the Government harmed or injured by reason of the statements? If it be claimed that the statements were material please explain. How material to what? Is it not a fact that the only statement you expect to prove is the testimony given by Mr. Joseph Bulger as shown by the transcript on file reporting testimony taken November 19, 1954? Please indicate which parts of said testimony you expect to prove false and how it was material. How did the falsehoods claimed have anything to do with the taxes of DeLucia for 1948, 1949 and 1950? What was the crime the defendants conspired to commit? What statute was violated? Do you claim that it was material as to whether or not DeLucia was in possession of $300,010 or any like sum as testified to by Bulger? If so, how was it material?

• • •

Reasons in Support of Motions.

Motion to Dismiss
Count One

20 The defendants move to dismiss count one upon the following grounds:**

On or about the 1st day of September and on or about the 19th day of November, 1954.

It is impossible to commit the crime charged, if any, on two days without resulting in two separate crimes. It is not claimed by the pleader that these two crimes are connected or related.

In view of the importance of the Statute of Limitations appearing on the face "or on about" is too vague.

**We copy a word, phrase or sentence from the indictment as a heading and follow with our objection.

2. Was married, did evade and defeat

The defendants are unable to understand if it is meant that he evaded and defeated in 1948 or on the two days first mentioned. If he evaded and defeated in 1948, the indictment shows on its face that the Statute of Limitations has run.

3. attempt to evade and defeat.

The defendants are unable to ascertain if this means

attempt to evade and
attempt to defeat
or
attempt to evade and
also to defeat

If it means the first or second, two separate crimes are charged. It is impossible to attempt something and to do it at the same time. The allegation that one attempted a crime is a mere conclusion.

4. making and causing

21 **These are two separ. crimes. It is impossible for one to make and cause to be made the same falsification—either the defendant made the statement or he caused it to be made—he could not do both. If he made one and caused the other to be made there are two crimes charged. The defendants are left to guess when, where and by whom. If he caused some one to make a false statement the allegation is a mere conclusion. Facts should have been stated to show how caused.**

5. false statements and representations

This is a mere conclusion. The defendants are not informed as to how they were false, or how they were material or what the agents did, if anything about them.

$300,000

There is no allegation that this came within the jurisdiction of the agents and how it could possibly make any difference to the agents, whether the statements were false or true.

6. made and caused for the purpose

The defendants are unable to ascertain if the pleader means made or caused.

7. for the purpose of

This is a mere conclusion. On the face of the indictment it appears impossible that statements made in 1954 could be made for the purpose of concealing a crime committed in 1948.

22 **8. concealing additional unreported net income**

Additional to what? If DeLucia concealed part of his income in 1948 he did not attempt to evade, he accomplished the crime. The Statute of Limitations has run and nothing he might say or cause to be said in 1954 could have any materiality.

9. There was due and owing

A mere conclusion.

10. In violation of 26 U S C § 7201

The defendants are unable to understand what is alleged to have been in violation of § 7201. Was it the attempt to evade and defeat in 1948? § 7201 was not in existence in 1948. Was it the making of false statements? There is nothing in § 7201 about false statements. The penalty there is for an attempt to evade or defeat tax. If defendant did that, he did it in 1949 and it has become outlawed.

Count Two

11. The language in this count is the same as in Count One and the defendants make the same objections.

Count Three

on or about the 5th day of March

12. In view of the Statute of Limitations this allegation is vague and uncertain.

attempt to evade and defeat

13. The defendants are unable to understand this for reasons given under Count one.

there was owing

14. This is a mere conclusion with no facts to support.

26 U S C § 145 (b)

23 15. The filing of a false return is punishable by virtue of a different statute.*

Count Four

continuing until

16. The allegation that the conspiracy was a continuing one is a mere conclusion placed in the indictment to defeat the statute of limitations which ran on any conspiracy formed in 1950. There is no fact stated to show why the defendants would conspire back in 1950 to do something in 1954.

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*Your Honor had this question in **U. S. v. Achilli**, No. 53 CR 154, on a motion to reduce sentence now pending in the Supreme Court.

17 **to commit an offense against the United States**

This is vague and uncertain. What offense?

18 **matter within the jurisdiction**

This is an indefinite vague conclusion with no facts in support.

19 **to wit**

The defendants understand this to mean that the Government might choose to prove something else.

false, fictitious and fraudulent

20. The defendants are unable to ascertain from this count what, where and when as to the false statements or what the statements were. Mere conclusions.

Title 18 § 2

21. What was in violation of § 2. The indictment does not disclose. There is nothing to violate in § 2.

Title 18 § 1001

22. There are a number of crimes to be found in § 1001. The defendants are unable to ascertain from the indictment how § 1001 was violated or in what manner the conspirators planned to violate, where or when.

It is required by law that any false statement should be on a material matter. The indictment is defective in omitting this necessary allegation and facts in support.

23 **in furtherance to effect object**

These are mere conclusions and an inspection of the allegations of overt acts show that they have no connection with any conspiracy. Being present at a conference is not an act. Giving testimony is not an act that can be in furtherance of the conspiracy without further facts. If it is intended to allege that one of the defendants committed perjury, purjury is a crime from its nature committed by one individual. Two persons can not be guilty of conspiring to commit purjury.

in violation Title 18 § 371

24. The defendants have not been informed as to how § 371 was violated.

The indictment as a whole

* * *

25. The allegations of the indictment are so uncertain and indefinite that the rights guaranteed by the Sixth Amendment to the Constitution have been violated.

26. For the same reason, Rule 8 of the Federal Rules of Criminal Procedure has not been followed.

IN THE

United States District Court

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES, **vs.** **PAUL DE LUCIA and JOSEPH BULGER,**	**Before** **Hon. Julius Miner** **District Judge** **No. 57 CR 154**

TRANSCRIPT OF PROCEEDINGS

Monday May 5, 1958, 10 A.M.

Appearances:

Robert Tieken
United States Attorney
William A. Barnett
Assistant United States Attorney
John J. Quan
Assistant United States Attorney
on behalf of the Government

Wm. Scott Stewart
on behalf of defendant DeLucia

Joseph E. Green
Richard E. Gorman
on behalf of defendant Bulger

Note in re Appendix

Appellant raises the question of the sufficiency of the evidence to support the verdicts. The entire record, including a complete transcript and all exhibits, has been certified here. In this appendix appellant has included all evidence and proceedings pertinent to the questions raised. The printed pages contain references to those pages of the record on file from which they have been copied. In the case of testimony, the fact that parts have been omitted has been indicated by asterisks. Some of the testimony, where indicated, has been abstracted or reduced to narrative form. We have arranged the portions of the record printed in chronological order and have endeavored to avoid unnecessary or repetitious printing. Original exhibits, charts and other papers which counsel for appellant wishes to be considered have been printed, or otherwise reproduced.

* * * *

By Mr. Barnett: Your Honor, at this time I ask leave of court to file an amended bill of particulars. I have filed a bill of particulars very recently, and I wish to extend the bill of particulars and file an amended one.

I understand according to the rule I may file an amended bill of particulars at any time with permission of the Court.

I have not yet served a copy of the amended bill of particulars on counsel, but I will do so now.

Amended Bill of Particulars

Now comes the United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, and files the following amended Bill of Particulars:

1. The object of the conspiracy charged in Count Four of the indictment was the making of false statements.
2. The false statements referred to and in respect to which proof will be offered are statements occurring on September 1, 1954, November 19, 1954, February 1, 1957 and February 28, 1957.
3. Details concerning the false statements made on September 1, 1954 and November 19, 1954 are contained in the two overt acts alleged in count 4 of the indictment.
4. The false statement occuring on February 1, 1957 and February 28, 1957, were made by Joseph I. Bulger to the December 1956 Federal Grand Jury in the United States Court House at Chicago, Illinois.

• • • •

15 By Mr. Barnett: Your Honor, I herewith file the amended bill of particulars.

By The Court: They may be filed.

By Mr. Stewart: May I have something to say about that?

By Mr. Barnett: I beg your pardon.

16 By Mr. Stewart: I represent DeLucia, and he is mentioned in the title here. I assume this is furnished to both defendants?

By Mr. Barnett: Yes, I have given you copies of it.

By Mr. Stewart: Your Honor will find that fundamentally there is great similarity between the practice over here and where your Honor has had your experience.

You will remember when I remind you that if a defendant accepts a bill of particulars and doesn't complain about it, he is not in a very good position to preserve what point he has.

Your Honor told us the other day when we were in here the policy the Court has of not reviewing other judges with reference to what happened. So just to acquaint your Honor with the record, we filed a rather lengthy printed preliminary motion for a bill of particulars, and we set up in paragraphs the things that we wanted, and those motions were overruled by Judge Knoch.

Now I complain, and I go back and I want the things that I originally asked for. I will ask your Honor to rule whether or not I get them, because I am not satisfied
17 with this bill of particulars. Although it was overruled by Judge Knoch, I want your Honor, if your Honor please, to rule on whether I get what I originally asked for.

By The Court: I will sustain and uphold Judge Knoch's ruling on the original objections to the bill of particulars that you have mentioned. If you wish to make objections to the amended bill—

18 By Mr. Stewart: The amended, as far as it goes, is all right, but I want to move to strike—

By The Court: I will permit this. I will permit the original objections to stand to the amendment in so far as they are repetitious.

By Mr. Stewart: That is what I wish.

By The Court: That will be the order.

By Mr. Stewart: I wish to have the record show that I asked for the things over again that I did not get.

By The Court: Where it is repetitious, you do not need to repeat your objections. They will stand.

* * *

By Mr. Barnett: Now, your Honor, as I understand, we are gathered here to read stipulations or proposed stipulations into the record.

By The Court: That is right.

By Mr. Barnett: Prior to coming into court and during the preceding two or three weeks, Government counsel and defense counsel have had certain preliminary meetings with respect to what we would stipulate to.

I propose to read now the stipulations as we of the Government understand that the defendants have agreed to stipulate. In other words, there may be certain errors as I go through this thing that they do not agree to, but these are the stipulations, as I understand, that they are willing to agree to.

Opening and preliminarily it is stipulated:

It is hereby stipulated and agreed by and between Paul DeLucia and Joseph I. Bulger, defendants herein, through their respective counsel. That any and all stipulations entered into herein are for the purpose of this case only;

That both parties reserve the right to produce additional evidence in connection with any and all matters stipulated;

That photostatic copies may be substituted for original documents.

It is further stipulated and agreed—this we are captioning Stipulation No. 1, the one that I am about to read now.

Stipulation No. 1. It is stipulated and agreed that Paul DeLucia entered the United States through the Port of New York on August 10, 1920, under the name of Paul Maglio;

That Paul DeLucia became a naturalized citizen of the United States of America on September 27, 1928, in the United States District Court at Chicago, Illinois;

That he changed his name from Paul Maglio, as it appears on his petition for naturalization, Government's Exhibit 1, to Paul DeLucia, as it appears on his certificate of naturalization, Government's Exhibit 2;

That on December 22, 1943, in the United States District Court for the Southern District of New York, in Case No. C-114/101, Paul DeLucia was convicted of conspiring to extort money from producers and exhibitors of moving pictures during the years 1935 to 1940 in violation of Subdivision (D) of Section 420(a), Title 18, United States Code Annotated, and was sentenced to ten years in
22 prison and to pay a fine of $10,000.00, which fine was paid on May 14, 1945. Government's Exhibit No. 3 is a true and correct copy of the judgment and commitment order and the election to serve sentence;

That on March 8, 1944, Paul DeLucia elected to commence serving his prison sentence, and that on August 13, 1947 he was paroled from Leavenworth Prison;

That Paul DeLucia returned to his home in River Forest, Illinois, and remained on parole until March 7, 1954;

That Paul DeLucia prepared and executed and filed with the United States Probation Officer, Chicago, Illinois, for each month during the tenure of his parole a form No. 24, Monthly Report-Parole, on which was reported his income and expenditures for said month;

That Government's Exhibits 4-A through 4-E; 5-A through 5-M; 6-A through 6-L; and 7-A through 7-L are true and correct photostatic copies of said parole report form No. 24 which were filed by Paul DeLucia for the period August 13, 1947, to December 31, 1950, inclusive.

Stipulation No. 2. It is further agreed that Paul
23 DeLucia filed Federal income tax returns at Chicago, Illinois, for the years 1934 through 1950 inclusive, with the exception of the year 1944 when Paul DeLucia did not file a return;

That Government's Exhibits 8, 9, 10, 11 and 12 are true and correct photostatic copies of the returns filed by Paul DeLucia for the years 1935 through 1939 inclusive;

That Government's Exhibits 13, 14, 15, 16, 17-A, 17-B, 18, 19, 20, 21 and 22 are the original returns filed by Paul DeLucia for the years 1940 through 1950, inclusive.

24 That on February 5, 1947, Paul DeLucia filed with the Collector of Internal Revenue at Chicago, Illinois a claim for refund, Form 843, in connection with income taxes paid by Paul DeLucia on his 1943 income tax return;

That Government Exhibit No. 23 is the original Form No. 843 filed by Paul DeLucia on February 5, 1947.

Stipulation No. 3. It is further agreed that Paul DeLucia paid no Federal income taxes during the period 1920 through 1934 inclusive;

That Paul DeLucia paid a total of $150,696.23 in Federal income taxes during the period 1935 through 1947 inclusive, as shown by United States Treasury Form No. 899.

It is understood that the above figure does not include the sum of $55,754.37 paid by Eugene Bernstein, attorney, on October 11, 1946, to apply on Paul DeLucia's tax liability for the years 1935, 1936 and 1937;

That Government Exhibit No. 24 is a United States Treasury Form No. 899 which is a true and correct

25 copy of the assessment of income taxes due and payments or credits made in re Paul DeLucia for the period 1920 through 1950 inclusive, as reflected by the assessment rolls of the District Director of Internal Revenue for the First District of Illinois.

26 Stipulation No. 4. It is further agreed:

That said Paul DeLucia had a Brokerage Account with Goodbody & Co., 1 North LaSalle Street, Chicago, Illinois, during the period January 6, 1940 through February 14, 1941.

That this account was in the name of Paul DeLucia and is identified as Account No. 36-5216.

That through this account Paul DeLucia conducted the following brokerage transactions which are summarized below.

I am reading across and I will read the captions. They are: Year, Item, Expenditures, Item, and Receipts.

1939 Stock $3,973.21, Item Stock—for the sale of stock—-0-.

1940 Expenditures for the purchase of stock $16,095.00; Expenditure for interest payments is $107.78; income from one Henry H. Marks, attorney, to effect a settlement of these liens in 1940 for a total consideration of $1650.00.

That Paul DeLucia paid said Marks a fee of $800.00 in 1941 for service rendered in the above connection.

That title—

31 By The Court: That is in addition to the $1600.00?

By Mr. Barnett: That is right. It is the total cost of the lot.

By The Court: Sixteen hundred, and he paid eight hundred—

By Mr. Barnett: $1650.00 plus $800.00 for attorney's fees, that is, for settlement of taxes, plus two thousand for the purchase of the lot initially in a foreclosure.

That title to the above property was taken in the name of Nancy DeLucia, the wife of Paul DeLucia.

The details of the above expenditures are contained in Government Exhibit No. 30.

32 Stipulation No. 10.

It is further agreed:

That Paul DeLucia, on or about November 15, 1938, purchased from Mrs. Hannah M. Smith, personal property located at 812 Lathrop Avenue, River Forest, Illinois, for $1,500 in cash, as indicated in Government Exhibit No. 31.

Stipulation No. 11.

It is further agreed:

That Paul DeLucia paid the following Cook County tax warrants to the Treasurer of Cook County, covering his property (Lot 6, Block 12) located at Chicago and Lathrop Avenues, River Forest, Illinois, on December 31, 1940 in the total amount of $340.55 as follows:

Tax Warrant No. 290, two installments, for a total of $301.20.

Tax Warrant No. 305, for a total amount of $39.35.

Total warrants—$340.55.

Details of the above expenditure are contained in Government Exhibit 32.

Stipulation No. 12.

It is further agreed:

That Paul DeLucia paid the following real estate
33 taxes and personal property taxes on his residence and property contained therein at 812 Lathrop Avenue, River Forest, Illinois, during the period 1940 to 1950, inclusive.

The details of the above expenditures are contained in Government Exhibit No. 33 and unless there is some demand to do so, your Honor, I will just give the total for the period here.

The real property taxes for the period 1940 to 1950 inclusive were $14,591.94.

The personal property taxes for the period 1940 to 1947 inclusive totaled $481.19.

The details of the above expenditures are in Government Exhibit No. 33.

Stipulation No. 13.

It is further agreed:

That Paul DeLucia paid the following real estate taxes on his Long Beach, Indiana, residence to the County Collector of LaPorte County, Indiana, in the total amount of $5,088.15 as follows:

1940	$815.47
1941	336.71
1942	328.76
34 1943	314.82
1944	246.98
1945	310.80
1946	402.60
1947	429.08
1948	552.38
1949	663.88
1950	687.17

The details of the above expenditures are in Government Exhibit No. 34.

35 Stipulation No. 14.

It is further agreed:

That Paul DeLucia paid the following medical bills to Dr. Morris Lev, M. D., 104 South Michigan Avenue, Chicago, Illinois:

Again, I will read only the total, your Honor.

For the period 1941 to 1947 inclusive, medical payments to Dr. Morris Lev totaled $1,365.00.

That the details of the above expenditures are contained in Government Exhibit No. 35.

Stipulation No. 15.

It is further agreed:

That Paul DeLucia purchased the following Series E United States War Savings Bonds, none of which were redeemed as of March 5, 1957:

1941 Series E bonds purchased for a cost of $2,250.00.
1942 bonds purchased at a cost of $4,575.00.
1943 bonds purchased at a cost of $75.00.
That the details of the above expenditures are contained in Government Exhibit No. 36.

Stipulation No. 16.

It is further agreed:

36 That Paul DeLucia paid $528.25 to Alfred J. Cilella, Attorney, on June 24, 1942 as reimbursement for closing costs expended by Mr. Cilella on behalf of Paul DeLucia in connection with the purchase of the DeLucia Farm, Kendall County, Illinois.

The details of this expenditure are contained in Government Exhibit No. 37.

Stipulation No. 17.

It is further agreed:

That Paul DeLucia expended the following funds in Farm repairs, maintenance and improvements during the year 1942:

I will read only the total, your Honor, which is $9,161.84.

The details of this expenditure are contained in Government Exhibit No. 38.

Stipulation No. 18.

It is further agreed:

That Paul DeLucia paid the following medical fee to Dr. Daniel H. Levinthal, 801 South Beverly Drive, Beverly Hills, California on July 20, 1942, a fee of $2,500.00.

The details of the above expenditure are contained in Government Exhibit 39.

37 Stipulation No. 19.

It is further agreed:

That Paul DeLucia expended the following amounts for fuel oil used in heating the DeLucia residence at 812 Lathrop Avenue, River Forest, Illinois, during the period 1942 to 1950 inclusive: A total amount of $4,961.00.

The details of these expenditures are contained in Government Exhibit No. 40.

Stipulation No. 20.

It is further stipulated and agreed:

That Paul DeLucia purchased the following household furnishings from Dominick Sibilano, 3140 North Linder Avenue, Chicago, Illinois:

1939 purchases were $18,702.84.

1943 purchases were $1,881.79.

The details of the above expenditures are contained in Government Exhibit No. 41.

Stipulation No. 21.

It is further agreed:

That during 1943 Paul DeLucia had demolition work done at his Long Beach, Indiana, home by E. D. Glidden, a general contractor.

That Paul DeLucia expended the following moneys in connection therewith: The following sum in 1943,

38 $1,637.50.

The details of this expenditure are contained in Government Exhibit No. 42.

39 Stipulation No. 22.

It is further agreed:

That Paul DeLucia purchased the following stock of the TransAmerica Corporation during the year 1937:

600 shares of TransAmerica stock at a cost of $8,550.48, as detailed in Government Exhibit No. 43.

Stipulation No. 23.

It is further stipulated and agreed:

That Paul DeLucia expended the following funds as shown by his 1942 Income Tax Return:

Illinois Retail Occupational Tax, $350.

That Paul DeLucia expended the following funds as shown by his 1943 Income Tax Return:

Illinois Retail Occupational Tax, $150.

Stipulation No. 24.

It is further stipulated and agreed:

That Paul DeLucia expended the following funds as shown by his Income Tax Returns:

1942—City-State-Federal Taxes—$ 91.77.

1943—City-State-Federal Taxes— 100.00.

40 Stipulation No. 25.

It is further agreed:

That Paul DeLucia expended the following funds in Hospital Fees at Michael Reese Hospital:

1941, $100.00.

1942, $416.25.

The details of these expenditures are in Government Exhibit No. 44.

Stipulation No. 26.

It is further stipulated and agreed:

That Paul DeLucia paid the following Legal Fee to Eugene Bernstein:

May 9, 1945, $1,000.00.

That the details of the above expenditure are in Government Exhibit 45.

Stipulation No. 27.

It is further stipulated and agreed:

That Paul DeLucia paid Anthony Giaconi, 1315 North 11th Avenue, Melrose Park, Illinois, the following salaries —for caretaker's services at 812 Lathrop Avenue, River Forest, Illinois:

In 1941, $1,560.00.

41 The same salary continued through and including 1950, but, in 1950, he was paid only $1,170.00.

The total payments for the period 1941 to 1950 were $15,210.00.

The details of these expenditures are in Government Exhibit No. 46.

42 Stipulation No. 28.

It is further agreed:

That Paul DeLucia expended the following sums for household furnishings from A. Contursi & Son as follows:

1946, $632.00.

1948, $612.00.

Details of these expenditures are in Government Exhibit No. 47.

Stipulation No. 29.

It is further agreed:

That Paul DeLucia expended the following moneys for services rendered to his residence at Stop 29, Long Beach, Indiana.

1946, $441.66.

1947, $514.47.

1948, $378.39.

1949, $288.18.

1950, $242.22.

The details of these expenditures are in Government Exhibit No. 48.

May I have a moment to consult with counsel, your Honor?

By the Court: Yes.

By Mr. Barnett: Stipulation No. 30.

43 It is further agreed:

That Paul DeLucia advanced to the World Amusement Corporation of Illinois the sum of $1,000.00 on or about April 28, 1934, for which he received 133-1/3 shares of World Amusement stock in return.

The details of this expenditure are contained in Government Exhibit No. 49.

Stipulation No. 31.

It is further stipulated and agreed:

That Paul DeLucia reported the following expenditures on his monthly reports, parole form No. 24, during the

year 1947, and I will read only the total for the year, $28,334.69.

The details of the above expenditures are contained in parole forms No. 24, Government Exhibit No. 51.

I will strike that last paragraph—that the details of the above expenditures are contained in Government Exhibit 51.

Stipulation No. 32.

It is further agreed:

That Paul DeLucia reported the following expenditures on his monthly reports, parole form No. 24, during the
44 year 1948, the total sum of $217,017.37 as detailed in Government Exhibit 52.

Stipulation No. 33.

It is further stipulated and agreed:

That Paul DeLucia reported the following expenditures on his monthly report, parole form No. 24, during the year 1949, in the total amount of $120,933.14, as detailed in Government Exhibit 53.

45 Stipulation No. 34.

It is further agreed:

That Paul DeLucia reported the following expenditures on his monthly parole reports, Parole Form No. 24, during the year 1950, the total amount of $118,770.76, as detailed in Government Exhibit No. 54.

If your Honor will excuse me, I have one more that counsel haven't seen yet.

Stipulation No. 35.

It is further agreed:

That Paul DeLucia mortgaged his residence at 812 Lathrop Avenue, River Forest, Illinois in the amount of $30,000 on July 25, 1939, for a five year term with interest payable at 6 per cent per annum, payable semi-annually each February 1st and August 1st.

That one Steve Matalone, now deceased, was the mortgagee in this transaction, and that on July 25, 1939 Paul and Nancy DeLucia executed the following trust deed to the Chicago Title and Trust Company:

Deed No. 12346454 dated July 25, 1939.

The details of this Mortgage Loan are contained in
46 Government Exhibit 50.

Now that concludes the stipulations, your Honor.

By Mr. Stewart: May it please the Court, we have had a number of conferences and I will now state some of the qualifications on this stipulation in order that the Court might understand what we have in mind.

Largely, I think, our minds have met and Mr. Barnett agrees that we can have these qualifications.

In case I state something that he doesn't agree to, of course, he can acquaint the Court with his position.

To start with, this stipulation is made as you make one with reference to a map in a murder case when you were a state trial judge, your Honor. You know the lawyer for the defense will say, "You don't need to bring in the photographer; put it up and if we find any mistakes in it during the trial, why, we will correct it."

So, it is the same thing here. If it turns out on further investigation, or, as we go along if there is an error, we will acquaint the Court with our claim and your Honor
47 can adjust it and, if necessary, have the witness come in.

At the same time, as I was talking with Mr. Barnett, he told me that he would like to prove some details concerning some of the transactions and I said, "Well, that will be all right with us," and, "What did you have in mind?"

He said, "Well, some of these payments were in cash."

I said, "Well, if you will put in the stipulation they

are cash, we will probably agree to it, if that is the fact, but, if you want to bring in witnesses or something, that is already stipulated, if you have a purpose in it and you acquaint the Judge with the purpose, well, I have no doubt that the Judge will allow you to do it, and that goes for both sides."

Now, at the same time, we may, in order to shorten this up and save the time of the Court, we may have tentatively agreed to some things that we want to put a little qualification on.

To start with, we are not agreeing that the evidence is admissible. That is, your Honor is going to have to pass upon our objections as we make them.

48 I am not agreeing that it is material and we will not agree that the evidence has any weight or any place here.

49 Now, I asked Mr. Barnett how he intended to handle it after we had placed all this in the record. I asked him if after we selected the jury that he intended to read the matter off to the jury. He said, "No;" he said it was his purpose to put the fact in that is stipulated to in the place he thinks it belongs chronologically in his case. That would be all right with us. That would give us a chance to make specific objections which I have in mind.

I could point out the nature of those objections right now so that your Honor will know what we intend to do as we go along and possibly Mr. Barnett can prepare himself.

For instance, we know that they have a record of a conviction of Paul DeLucia in the East. That was in the stipulation. We know if your Honor allowed it, that they could prove it, so, we don't require them to bring the witnesses here, but, we are going to object and say that has no place in this case and, even if it is admitted by your Honor, we will ask your Honor to restrict it further and not

allow them to put the details in that they have in there.

In other words, we hope to have an opportunity to
50 discuss these matters where we ask for that opportunity, as the case arises, as we go along in the trial.

Now, there are certain things that require adjustment, for instance. Mr. Barnett said that Paul DeLucia bought certain automobiles, Cadillacs and Oldsmobiles. Well, I understand the fact to be that at the time he made the purchases, he turned in another car, which would make the transaction of less amount and I assume that we can adjust that as we go along. And, also, during part of this period Paul DeLucia was in the penitentiary. Now, whether or not they can prove that he made these expenditures at that time—they may not have the proof. I don't want to agree to anything that they may not have the proof for, so, we may call your Honor's attention to that as we go along.

I believe that Mr. Barnett is agreeable to the qualifications I have made here and if he isn't, of course he can point it out. And then, of course, those representing Mr. Bulger, they have objections which do not apply to Mr. DeLucia, so, I will leave it to them to state their views
51 but your Honor understands that we are trying to save time by telling the prosecutor, "You don't need a witness for this transaction," if we feel that the transaction took place, but, we will be in the same position we would have been in if the witness were here.

We want to make our objections at the time that the piece of evidence is offered in evidence here before the jury and have your Honor rule then on whether or not it is to be admitted.

52 By Mr. Green: If it please the Court, everything which has been said by Mr. Stewart on behalf of Mr. DeLucia, whom he represents, we wish to adopt on behalf of Mr. Bulger. That is, we wish the specific reservation to show in the record at this time our right to challenge

the accuracy of any of the matters concerning which the stipulations were entered into, and as well to present to your Honor at the time the Government seeks to introduce them before the jury, our claim as to their incompetency, their immateriality, and their irrelevancy to the issues in this case against the defendant Mr. Bulger.

In that connection, your Honor, there has been a motion made heretofore—

By The Court: Let me ask a question, if I may.

By Mr. Green: Yes, your Honor.

By The Court: Is that stipulation between the Government and both defendants or just one defendant?

By Mr. Barnett: Both defendants, your Honor.

By Mr. Green: It must be between both defendants,
53 but as stipulated to by the defendant Bulger, we want the record to specifically show it was with those reservations.

53 We, of course, are not in the position, as far as Mr. Bulger is concerned, of knowing the entirety of the past life and past financial doings and the past transactions of Mr. DeLucia.

I know this Court was impressed this morning, as I have been impressed when we talked of this stipulation, by the fact that this stipulation in its entirety went to those past activities, doings and financial affairs of Mr. DeLucia. It has nothing to do whatsoever with Mr. Bulger.

We, of course, will present those objections appropriately when the time comes. We want to make that reservation. But in that connection, and I think this is important, there has been, I concede, a motion made before Judge Knoch, your Honor's predecessor in this case, made by Mr. Stewart at a time when he represented both defendants, for a separate trial and severance.

That motion was overruled by Judge Knoch. It is also my understanding that that motion was renewed before your Honor, and that this Court at the time of its re-
54 newal said, "I shall be bound by the law of the case,

and that consists of the rulings which have already been made by Judge Knoch."

But it was also my understanding that your Honor said, "If at any time it shall appear to me that those rulings of Judge Knoch, particularly in regard to this motion for a severance, work to your prejudice, I shall at that time reconsider it."

I know this Court was impressed this morning by just the facts of this preliminary stipulation, impressed by what the nature of the proof in this case is bound to be—

55 By The Court: In fact, with all the exceptions and explanations and the reservations, I wasn't impressed. There is a question in my mind as to how far we did stipulate?

By Mr. Barnett: It seems to me there is no stipulation here at all yet, your Honor.

By The Court: I say to the contrary, from what my good friend Mr. Scott Stewart said and what you are saying now, I don't know what you have stipulated to.

By Mr. Green: I am saying now, your Honor—

By The Court: Let me see if I can state what I think is the situation here. If I am wrong, you correct me.

They may read that stipulation before the jury, and the defendants, both or either of them, may challenge any phase of it as to accuracy, admissibility or relevancy.

Did I state it correctly?

By Mr. Stewart: That is right.

By Mr. Green: Right.

By Mr. Stewart: Piece by piece.

By The Court: But the burden will shift to the de-

56 fendants respectively. The Court and jury both may consider all the testimony as though it had been properly, regularly offered and received in evidence by the court in so far as the Government is concerned.

Is that the position?

By Mr. Stewart: May I interrupt you? What is that about burden? We don't accept any shift of burden.

By The Court: Burden may be the wrong word. The responsibility—I didn't mean burden in the legal sense.

By Mr. Stewart: All right. I have to guard against that.

By The Court: If it isn't challenged by the defendants or either of them, it is accepted as it is. Unless challenged by either side.

By Mr. Stewart: That is right.

By The Court: It is admitted in evidence.

By Mr. Stewart: We expect to make our challenges as the trial proceeds.

By The Court: That is right. Did you get that, Mr. Barnett?

By Mr. Barnett: One little problem I have here, your Honor, is at a time when I want to read a stipulation
57 to the jury, before I read it, I assume that counsel, particularly Mr. Stewart, will state his objection before I read it?

By the Court: No, Mr. Barnett.

By Mr. Barnett: I will read it first?

By The Court: As I understand it. As I stated for the record, as I understand it, you may read the stipulation before the jury and into the record at the trial of the case, and the understanding will be that they may challenge any phase or part of it as to accuracy, as to admissibility, as to relevancy. In addition thereto, as to what binding effect it has on Mr. Bulger because the stipulation covers—

By Mr. Barnett: Both.

By The Court: Only the transactions of the other defendant, and it will be up to you to connect them up with knowledge or some charge.

Have I stated it clearly, as you see it?

By Mr. Stewart: We would like to have your Honor hear us on the question of whether or not it can be read with reference, for instance, to the conviction. Your Honor will pass on the admissibility first.

58 By The Court: Then the one part I will have to hear before we get to the jury is that one stipulation

as to the conviction. Frankly, I want to hear both sides. What did you stipulate then? That if it is admissible, then it goes in as it is?

By Mr. Stewart: No. They have the facts and they could prove it that way.

By The Court: If I rule in their favor, then, they may offer it by stipulation and you may challenge that as to accuracy?

By Mr. Stewart: Well, it is accurate, all right, Judge.

As to that particular thing, I will have two objections: First, that they don't put it in at all, and then your Honor will rule on that. If your Honor rules that it goes in, I want to be heard on cutting it down and not putting the details in. Then after your Honor's ruling, they go ahead.

The thing I am waiving is that they don't need to bring any witnesses here to show the record.

By The Court: Yes, that is right.

By Mr. Stewart: I haven't exhausted that. I used
59 that as an illustration. Each time that he has something that he wants to read to the jury, we would like to be heard on it with your Honor's permission.

By Mr. Green: That is right, your Honor.

By The Court: Each stipulation?

By Mr. Stewart: Oh, some of them are entirely harmless. We will indicate which they are when we get started in the trial, but we don't want your Honor to understand that the prosecutor can go ahead and read that to the jury without hearing from us because there are a lot of objections we have that your Honor wouldn't be in position to rule on now because you would have to know a little more about the case.

But we are in the same position as if the witnesses came here.

By The Court: I interrupted my good friend counsel here. When he said I must have been impressed as he was impressed, I was thinking to myself all the time just what is the stipulation about?

By Mr. Green: The stipulation as I gather, returning to the content of the stipulation, relates, as I say,
60 entirely to the doings of Mr. DeLucia. As far as each one of those things is concerned, Mr. Bulger will have an objection as to how this in any way tends to prove or disprove any of the issues made in the indictment against Bulger.

By The Court: If I may interrupt?

By Mr. Green: Yes, your Honor.

By The Court: To expedite matters and to make it a bit more orderly and chronological, may I expect after the selection of the jury that you will argue all of these stipulations so that when we are through with the arguments, you can go on before the jury with whatever has been sustained?

By Mr. Stewart: I think I have an even better idea, which I haven't discussed with Mr. Barnett yet. He will hear this for the first time. That is, when the jury is selected, I am going to ask your Honor to restrict him, as we do sometimes, in his opening statement.

For instance, when your Honor was trying state cases, if the prosecutor had a confession, the defense would take the position, "Now if you read the confession to the jury, they will never be able to erase it from their minds. We want a preliminary hearing on whether or not you can
61 do it."

So it is going to be our position after the jury is selected that they can't go into these things that are not in the indictment.

62 By The Court: That is exactly what I meant, Mr. Stewart. What I meant was, your objections are so general now, your qualifications and your reservations are so general now that my preference would be for all parties concerned, before we go on with the opening statements and with the reading of the stipulation before the jury, that we argue it out, first, as to the conviction and, secondly,

as to any particular phase of any particular stipulation you have in mind. Then when we clear the decks, we can go on with the trial.

By Mr. Stewart: That is agreeable. I think the proper time to do that is after the jury is selected. Then we can make a showing.

By The Court: That is right, and before the opening statements.

By Mr. Stewart: That is right. We expect to make a showing. We are going to introduce evidence and show your Honor that they don't have a right to go into these years that are not in the indictment. That is our intention. We don't expect to take up the time—

By The Court: Introduce evidence or law?

By Mr. Stewart: Evidence and law. We are going to make a motion based on the showings here that
63 they have no right to use what is called the net worth method at all.

By The Court: All right. I will hear you at the time.

By Mr. Barnett: That will be after the jury is selected, I take it?

By The Court: After the jury is selected. We will excuse the jury.

By Mr. Stewart: Mr. Barnett can take that as a notice now.

By Mr. Barnett: I will do that, Mr. Stewart.

By Mr. Green: We are going to be faced, I am afraid, your Honor, as far as the defendant Bulger is concerned, when these various things are received if they are to be received at all, with a constant admonition to the jury, you are to consider this, if they are to consider it at all—if your Honor allows it after hearing Mr. Stewart—they are to consider it only as against the defendant DeLucia, not against Bulger.

As far as the defendant Bulger is concerned, there is a very small issue before the Court. The sole issue that is before the Court and the sole issue that we are going to try

in the course of this five or six week trial, which
64 may be somewhat abbreviated as a result of the economy of time that has been effected by the stipulation, but the sole issue we are going to try as far as he is concerned, is the truth or falsity of a statement of a single objective fact. Did he or did he not, as is alleged in the indictment and pointed up by the bill of particulars—was the statement by Mr. Bulger true or false that he saw $300,000.00 in the possession of Mr. DeLucia on two certain occasions.

That is the sole issue.

By The Court: In whose possession?

By Mr. Green: In the possession of Mr. DeLucia. That is the sole issue. There is nothing else in this case about Mr. Bulger except that one fact.

65 By The Court: Does Mr. Barnett accept that?

By Mr. Barnett: Your Honor, if you want to hear me on that, the situation is this—

By The Court: Let's not do it now. I don't want to get into it piecemeal. We are on trial. I will protect Mr. Bulger's right so far as the law will permit me to in admonishing the jury, in so far as the inadmissibility or probable inadmissibility of any testimony. We will meet that as and when the testimony is offered.

Whether it will come in a general statement or in the form of my ruling upon objections, as we do in the state courts when you make an objection to the admissibility of certain testimony as against a particular defendant, and the Court is asked to instruct the jury to disregard it. I may make my ruling then to disregard it until and unless I rule that it has been connected up, if it becomes admissible as against him.

Is that what you have in mind, Mr. Stewart?

By Mr. Stewart: I think Mr. Green was leading up to renewing his motion for severance.

By Mr. Green: That is precisely what we were coming to, your Honor.

66 By Mr. Stewart: He was laying a foundation for it.

By Mr. Green: Precisely.

By Mr. Stewart: I suppose that could be postponed, if I may make a suggestion, until we come in and make our showing and your Honor knows a little more about the case.

By The Court: If I did say it, I don't recall. I have a lot of things in chambers. But I presume that is the law, and I will adhere to Judge Knoch's ruling upon the denial for a severance until such time when I come to an opinion that it has become an unfair hardship on one of the defendants and illegal to continue with the trial. I think it is incumbent upon the Court then to grant a severance upon motion or to deny it.

By Mr. Green: In other words, we may renew this at any time when we feel that the evidence has become such, or the course of the trial has taken such a turn—

By The Court: I think it is a matter of law. There is nothing generous on my part on it. I think any severance is based on that proposition of law.

67 By Mr. Green: Because I, very frankly, am at a loss to understand how we can proceed with a six weeks' trial where this much of it, evidence which could be put in in one day, relates to one defendant and the entirety of the rest of the case relates to the other defendant, and obtain a fair and impartial trial by a jury, regardless of the care with which your Honor might instruct that jury.

By The Court: So far I haven't heard anything that is clashing. Even if I concede what you said is true, the only isolated question is the $300,000 item.

By Mr. Green: That is all.

By The Court: I don't see anything that would warrant any separation there or divorcement because if it is used

to prove or disprove the other defendant's case, and he had knowledge and conspired, that is part of the price he is paying for being joined and involved.

By Mr. Green: That, however, is not the charge. I think we can convince the Court of that.

By The Court: I don't know anything about it. I wasn't of that impression until you expounded that. I thought probably he was the attorney in drafting these
68 schedules or having other information. But my mind is open, and I am going to hear it.

69 By Mr. Green: That, your Honor, is not the charge. When the appropriate time comes, I think that can be made clear to the Court.

By The Court: We will hear you.

By Mr. Green: Very well, your Honor.

By Mr. Barnett: I thought, your Honor, we might discuss the question of jury selection.

* * * *

75 Adjournment to Thursday, May 8, 1958, 10 a.m. May 8, 1958 jurors examined, selected and sworn. Ad-
227 journment to May 9, 1958.

Testimony of Eugene Bernstein.

276 Out of the presence of the jury there was called as a witness on behalf of the defendants herein, having been first duly sworn was examined and testified as follows:

EUGENE BERNSTEIN, testified as follows:

277 I was admitted to the bar in 1919. I have been admitted in this Federal Court, the Court of Appeals and the Supreme Court. I have specialized in Federal taxation.

I represented Paul De Lucia. I opened and kept a set of books marked Exhibits A-1 and A-2.

The journal reflects the income. There are certain divisions in the journal. One records the income from the farm and it is detailed. The other section indicates the distribution of expenses, farm expenses and purchases.

The other division represents journal entries which may be non cash items for the purposes of setting up the books and records or closing entries that usually appear in journalized items.

Mr. Stewart: Q. What is the other book, Defendants' Exhibit A-2?

A. The other exhibit represents a ledger and it has the various accounts set out of operation from farms, capital improvements, loans; indicates its liabilities. A section relating to revenue, which would be independent of the farm, is also reflected on the journal from dividends, and miscellaneous income, loss on the sale of securities and various other items relating to the sources from which revenue has been received.

Q. What was the purpose of keeping those books?

A. There were two purposes. One, the Parole Department insisted upon the monthly report, detailing disbursements and receipts. I believe at the inception the Parole Department only required the disbursements and subsequently wanted the allocation of receipts.

Q. What was the other purpose?

A. The other purpose was for the purpose of reflecting the income which he received during each of the calendar years and the disbursements, solely set up for income items and for no other items. In other words, they did not reflect the personal living expense. Outside of that, they had everything else in it which were non-revenue items.

Q. Were the books kept by you personally?

A. They were kept by me personally.

Q. They are in your handwriting?

A. Either in my handwriting or typed by me.

Q. Do they correctly portray what they purport to portray? Are they correct and accurate?

A. They are correct and accurate from all the evidence I have seen, which is recorded on these books.

Q. And from the information you made out income tax returns, did you?

A. Yes, sir. We also find in these books and records periodically there are trial balances taken off, and they are reflected in the books.

283 Q. Were the parole reports prepared by you also?

A. They were, sir, monthly.

Q. And you are familiar with the fact that the parties here have agreed to a stipulation and they have been given a certain exhibit number and they are here before the Court, those parole reports?

A. I understand that, yes, sir.

Q. Photostatic copies of these exhibits have been submitted to you, have they not?

A. I thought duplicate copies, not photostatic copies.

Q. Did you at my request make an analysis of those parole reports that are in evidence here?

A. I did, yes, sir.

Q. I will ask you to examine—

By Mr. Barnett: Mr. Stewart, may I interrupt for a second? Did you have the books marked?

By Mr. Stewart: Yes. Suppose we have these marked Defendants' Exhibits B-1, B-2 and B-3 for identification respectively.

(Thereupon said documents were marked Defendants' Exhibits B-1, B-2, B-3 for identification which are as follows:)

EXHIBIT B-1 as identified by Mr. Bernstein — ANALYSIS OF RECEIPTS AND DISBURSEMENTS AS SHOWN

		SOURCE OF FUNDS				
YEAR	FUNDS ON HAND	PERSONAL INJURY SETTLEMENT	FARM RECEIPTS	OTHER RECEIPTS	PROCEEDS OF LOANS	[illegible]
1947						
Sept.	$ 3,736.76					
Oct.	8,631.58					
Nov.	9,047.00					
Dec.	6,919.35					
	$ 28,334.69					
1948						
Jan.	$ 5,205.69					$1,000.00
Feb.	4,000.00					
Mar.	8,900.00				$11,000.00	
Apr.	16,823.90		$ 109.59		10,000.00	
May	20,695.21		174.66		30,000.00	
June	17,000.00		713.61(b)			
July	19,804.80		433.01	$ 50.00		
Aug.	12,860.30		577.23			
Sept.	24,490.26		74.92			
Oct.	17,044.14		4,013.05			
Nov.	12,635.52		3,770.71			
Dec.			20,601.95	115.18		
	$159,459.82		$30,468.63	$ 165.18	$51,000.00	$1,000.00
1949						
Jan.	$ 5,948.30	$1,500.00	$ 8,440.82	$ 50.00		
Feb.	4,195.84		1,036.16	7.50		
Mar.	9,867.70		233.70			
Apr.	1,781.38		13,681.89(c)			$ 329.40
May	4,014.22		6,986.22			233.97
June	8,035.84		405.68	463.25		
July	4,386.62		7,041.51			
Aug.	1,098.94		5,996.95			
Sept.	2,969.04		2,658.10			
Oct.	3,800.41		3,989.62			
Nov.	2,201.88		9,354.06			
Dec.	3,975.28(d)		37.73	152.50	$ 8,657.22	
	$ 52,275.45	$1,500.00	$59,862.44	$ 673.25	$ 8,657.22	$ 763.37

(a) Includes cancelled check of $462.00 charged off in prior period.
(b) Includes check of $100 on Estimated Tax.
(c) Parole Report in error. Receipts $2,000 more than indicated.
(d) Error $33.73 indicated in report.
(*) These items approximated or estimated.

ON PAROLE REPORTS OF PAUL DE LUCIA

ALLOCATION OF DISBURSEMENTS					
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
$ 450.00		$ 1,435.66			$ 3,736.76
		1,831.10			
500.00	$ 500.00	7,631.58			8,631.58
500.00	5,000.00	3,547.00			9,047.00
1,250.00		5,669.35			6,919.35
$ 2,700.00	$5,500.00	$ 20,134.69			$ 28,334.69
$ 2,000.00*		$ 3,205.69			$ 5,205.69
1,200.00*		1,800.00			4,000.00
2,000.00		1,500.00	$5,400.00		8,900.00
2,000.00*		25,933.49			27,933.49
2,000.00*		28,869.87			30,869.87
2,000.00* (b)		22,088.07			24,088.07
2,000.00*	$1,500.00	15,510.50		$ 277.31	20,287.81
	1,000.00				
2,000.00*	1,000.80	10,437.53			13,437.53
2,025.00*	2,000.00	20,240.18		300.00	24,565.18
2,000.00*		18,791.62		265.57	21,057.19
2,000.00*		14,406.23			16,406.23
3,000.00*		15,856.31		1,500.00	20,356.31
$24,225.00	$5,500.00	$178,639.49	$5,400.00	$2,342.88	$217,107.37
$ 2,000.00*		$ 13,939.12			$ 15,939.12
2,000.00*		2,342.61		$ 896.89	5,239.50
2,000.00*		6,101.40	$2,000.00		10,101.40
2,000.00*		10,494.12		969.15	13,463.27
2,000.00*		8,139.35		331.69	11,000.44
2,000.00*	$ 500.00	6,089.30		81.50	8,904.77
2,000.00*		8,646.34		781.81	11,428.15
3,000.00*		3,908.55		187.34	7,095.89
2,000.00*		3,327.14		300.00	5,627.14
2,000.00*		5,790.03			7,790.03
2,000.00*		9,555.94			11,555.94
		260.24			12,856.46
3,550.00*		9,046.22			
$26,550.00	$ 500.00	$ 87,640.36	$2,000.00	$3,548.38	$121,002.11

EXHIBIT B-2 as identified by Mr. Bernstein **RE: PAUL DE LUCIA**

SUMMARY OF INCOME, ADJUSTMENTS THERETO AND COMMISSIONER'S ADJUSTMENTS TO OTHERS

CALENDAR YEAR	NET INCOME PER RETURN	OTHER AND MISCELLANEOUS INCOME INDICATED PER RETURN	ADJUSTMENTS PER COMMISSIONER'S 90 DAY LETTER RE—DISTRIBUTION OF ADDITIONAL INCOME	TOTAL OF COLUMNS 2 AND 3 HEREOF AFTER COMMISSIONER'S ADJUSTMENT DE LUCIA
1935	$ 13,260.00		$ 44,757.06	$ 44,757.[redacted]
1936	24,000.00		83,899.61	83,899.61
1937	42,916.63	$ 39,400.00	85,046.77	124,446.77
1938	59,747.00	56,950.00**	16,877.80	73,827.80
1939	70,609.31	73,058.17**	-0-	
1940	60,764.78	60,139.70	-0-	
1941	72,186.80	70,738.98	-0-	
1942	71,026.60	72,503.52	-0-	
1943	79,700.00	80,375.00	-0-	
			Total	

** Revenue Agent Ned Klein's report indicates this item to be from gambling and other income.

* NOTE: During the calendar year, the first $20,000.00 was disbursed:

Paul De Lucia	$ 3,333.33	
Louis Campagna	3,333.34	
Frank Nitto	3,333.33	$ 10,000.00
George E. Brown	$ 5,000.00	
Wm. Bioff	5,000.00	10,000.00

Thereafter all sums were disbursed, 2/9ths to each of the first three—1/6th each to Brown and Bioff.

For Example: During 1935—

Distribution to Paul De Lucia	$ 44,757.06
Less 1/3 of $10,000	3,333.33
	$ 41,423.73
Distribution to Brown	$ 36,067.78
Less 50% of $10,000	5,000.00
	$ 31,067.78

ADJUSTMENTS PER COMMISSIONER'S 90 DAY LETTER TO OTHER DISTRIBUTORS			HUNT'S REPORT DECEMBER 31, 1948 AS TO MISCELLANEOUS INCOME**
LOUIS CAMPAGNA 2/9ths Int.	FRANK NITTO 2/9ths Int.	GEORGE E. BROWN 1/6th Int.	
$ 44,757.04*	$ 44,757.12*	$ 36,067.78*	
83,899.53	83,899.65	62,924.61	
124,446.61	124,446.77	93,334.95	
73,827.75	73,827.83	55,370.81	$ 59,749.72
42,051.91	42,051.91	31,538.91	78,043.94
35,910.98	35,911.04	26,933.24	
$404,893.82	$404,894.32	$306,170.30	

RATIO: 2/9ths (De Lucia interest) to 1/6th (Brown's interest) = 4/18ths to 3/18ths or 4/3rds.

3/4ths × $41,423.73 distributed as in above example to De Lucia, equals $31,067.78 distributed to Brown. To these sums should be added the allocations of the first $20,000.00.

It will be noted for each of the succeeding years, Brown (likewise Bioff) received approximately 3/4ths of the distribution originally allocated to Paul De Lucia.

EXHIBIT B-3 as identified by Mr. Bernstein

ANALYSIS OF RECEIPTS AND DISBURSEMENTS AS SHOWN

YEAR	SOURCE OF FUNDS: FUNDS ON HAND	FARM RECEIPTS	OTHER RECEIPTS—DIVIDENDS, SALE OF AUTO, ETC.	PROCEEDS OF LOANS
1950				
Jan.	$ 5,222.09			
Feb.	11,243.66	49.35	$ 639.05	
March	14,576.40	178.99		
April	5,249.56(b)	1,548.90	1,569.51(a)	
May			73.46	40,000.00
June	9,996.53	1,851.16		
July	8,353.06	8,161.20	38.50	
Aug.	696.26	10,925.51		
Sept.	1,440.86(c)	2,507.98		
Oct.	4,089.16	15.30	69.60	
Nov.	2,170.22	3,243.85		
Dec.	7.99	11,668.00		
	$63,045.79	$40,150.24	$2,390.12	$40,000.00

(a) Includes:

Sale of Cadillac	$1,550.00
Gasoline Refund	19.51
	$1,569.51

(b) Should be $993.63 additional.
Total carried forward as $3,249.56 on parole report—should be $4,243.19.

(c) Error $10.00. Should be $1,450.86.

(*) These items approximated or estimated.

ON PAROLE REPORTS OF PAUL DE LUCIA

ALLOCATION OF DISBURSEMENTS			
LIVING EXPENSE	FARM AND PROFESSIONAL FEES DISBURSEMENTS	TAXES, INSURANCE AND INVESTMENT DISBURSEMENTS	TOTAL DISBURSEMENTS
$ 2,000.00*	$ 3,029.59	$ 192.50	$ 5,222.09
2,000.00*	9,932.06		11,932.06
2,000.00	12,366.00	389.39	14,755.39
2,000.00*	7,361.60		9,361.60
2,000.00	9,870.36	384.08	12,254.44
2,000.00*	6,296.88	3,550.81	11,847.69
2,000.00	14,435.96	116,80	16,552.76
900.00*	10,721.77		11,621.77
1,200.00	2,758.84		3,958.84
1,400.00	2,686.76	87.30	4,174.06
1,400.00*	4,014.07		5,414.07
1,400.00*	8,714.99	1,561.00	11,675.99
$20,300.00	$92,188.88	$6,281.88	$118,770.76

STIPULATION

It is hereby stipulated and agreed:

(a) That the following statement shows the Federal income tax liability of this petitioner for the taxable years 1935 to 1938, inclusive:

1935	Tax	Penalty
Amounts assessed:		
Original-account #253211	$ 633.60	None
Jeopardy-March 3, 1945 Spl. #1 list page 0, line 6	10,571.80	$ 5,285.90
Total assessed	$11,205.40	$ 5,285.90
Amount which should have been assessed	4,646.23	None
Unpaid assessment to be abated	$ 6,559.17	$ 5,235.90
Liability	$ 4,646.23	None
Amount paid prior to issuance of deficiency notice	633.60	None
Deficiency	$ 4,012.63	None
Amount paid subsequent to issuance of deficiency notice:		
October 11, 1946	4,012.63	None
Deficiency in payment	$ None	$ None

1936	Tax	Penalty
Amounts assessed:		
Original-Account #202601	$ 2,181.00	$ None
Jeopardy-March 3, 1945, Spl. #1 list, page 0, line 7	34,614.75	17,307.37
Total assessed	$36,795.75	$17,307.37
Amount which should have been assessed	14,363.42	None
Unpaid assessment to be abated	$22,432.33	$17,307.37
Liability	$14,363.42	$ None
Amount paid prior to issuance of deficiency notice	2,181.00	None
Deficiency	$12,182.42	$ None
Amount paid subsequent to issuance of deficiency notice: October 11, 1946	12,182.42	None
Deficiency in payment	$ None	$ None

1937	Tax	Penalty
Amount assessed:		
Original-Account #206501	$ 6,600.65	$ None
Jeopardy-March 3, 1945, Spl. #1 list, page 0, line 8	42,678.61	21,339.30
Total assessed	$49,279.27	$21,339.30
Amount which should have been assessed	23,764.99	None
Unpaid assessment to be abated	$25,514.23	$21,339.30
Liability	$23,764.99	None

Amount paid prior to issuance of deficiency notice	6,600.66	None
Deficiency	$17,164.33	$ None
Amount paid subsequent to issuance of the deficiency notice: October 11, 1946	$17,164.33	$ None
Deficiency in payment	$ None	$ None

1938	Tax	Penalty
Amount assessed:		
Original-Account #206496	$11,806.33	$ None
Additional-January 1941, account #514842	1,091.89	None
Jeopardy-March 3, 1945, Spl. #1 list, page 0, line 9	6,124.43	3,608.16
Total assessed	$19,022.65	$3,608.16
Amount which should have been assessed	15,583.94	None
Unpaid assessment to be abated	$ 3,438.71	$3,608.16
Liability	$15,583.94	$ None
Amount paid prior to issuance of deficiency notice	$12,898.22	None
Deficiency	$ 2,685.72	$ None
Amount paid subsequent to issuance of deficiency notice: October 11, 1946	$ 2,683.72	$ None
Deficiency in payment	$ None	$ None

(b) That there are deficiencies in Federal Income tax due from this petitioner in the amount of $48.40 for the taxable year 1940 and in the amount of $53.00 for the taxable year 1941.

(c) That there are no penalties due from this petitioner for the taxable years 1935 to 1938 inclusive.

(d) That the Court may enter its decision that there are deficiencies in Federal income tax due from this petitioner for the taxable years 1935, 1936, 1937, 1938, 1940 and 1941 as follows:

Year	Deficiency in Tax
1935	$ 4,012.63
1936	12,182.42
1937	17,164.33
1938	2,685.72
1940	48.40
1941	53.00

(e) That the above-stated deficiencies in tax have been paid subsequent to the date of issuance of the deficiency notice by the Commissioner.

(Signed) Eugene Bernstein
Counsel for Petitioner

(Signed) J. P. Wenchel
J.D.K.
J. P. Wenchel
Chief Counsel
Bureau of Internal Revenue
Counsel for Respondent

284 By Mr. Stewart:

Q. Please examine Exhibits B-1, B-2 and B-3, and tell the Court what they are.

A. Exhibits B-1 and B-2 represent a monthly analysis of the reports, of the sums indicated on the parole reports. That would be on the front and on the back of the report where they were fully detailed. This is a summation of that result, and it is done by months, and the totals are indicated by year.

The source of funds is also indicated as being from Funds on Hand in one column, sums received from Personal Injury Settlement in another column, Farm Receipts, Other Receipts, which would be from dividends and sometimes from rebates of gasoline allowance from the State of Illinois because of the farm operations. That indicates the source of funds.

On the other side is the Allocation of Disbursements. This is indicated as being for medical and hospital disbursements, living expense disbursements, with a notation that those items, living expense, I believe, with the exception of a few months, indicated as being on the
285 parole reports stating that they are estimated or approximated.

Then there are attorneys' fees, bonds and so forth disbursements and farm disbursements; mortgage and interest disbursements; taxes, insurance and investment disbursement. Then the total disbursements.

286 For 1950, the distribution was not made as large because, you will notice, there is a difference on Exhibit B-2 where the allocation of farm and professional fees disbursements went together and taxes, insurance and investment disbursements are together.

In other words, I did not run a separate column under mortgage and interest disbursements because they are

allocated on the Parole reports under "farm disbursements."

Exhibit B-1 also indicates certain reference notes. For example (a) for the month of June, 1948 indicates farm receipts of $713.61. That indicates a charge back of $462, where a check was issued and subsequently canceled. Instead of decreasing the disbursements, I added that in as a revenue item, which automatically would set off that income.

I have a notation (b) under "living expense disbursements", which also shows that in that item for the month of June, 1948, that in the item of estimated or approximated living expense, there was the sum of $100 paid on esti-
287 mated tax.

Note (c) indicates that in the month of April, 1949 the Parole report indicates an error of $2,000, but there are more receipts shown on the report but they were not carried forward correctly.

Note (d) indicates an error of $33.73 from funds on hand. Then of course a notation on that indicates items that are approximated or estimated.

The summary on Exhibit B-2 is similar with the exception the headings were decreased. We don't have the heading in there of "personal injury settlement."

Also, as I indicated, there weren't as many allocations on the questions of disbursements, but these total sums appear on the report.

Incidentally, the total disbursements indicated for 1947 practically agree with the sum that is indicated in your stipulation with the Government excepting, I believe, I show $217,107.37, and I believe their figure is
288 $217,007.37.

My report would show approximately $100 more disbursed.

1949 agrees with the stipulated sum for disbursements, and the total disbursements for 1950 likewise agrees with the stipulated sum.

289 Exhibit B-3 is the Annual Recapitulation—Source of Funds—Per Paul DeLucia Parole Reports. This is per annum.

That is taking the totals indicated at the end, as shown on Exhibits B-1 and B-2, reflected annually and broken down as per the captions. From that is deducted the total disbursements as indicated under Total Disbursements which, as I indicated, agrees with the sum stipulated by the Government with the exception of a minor sum. Of course, the sum for 1947 is in here, which is not in the stipulation at all.

It also indicates an annual carryover of the source of funds from a prior period. In other words, in 1948, I indicate that the total receipts on this Exhibit B-3 per parole report is $241.093.63 and a total disbursements from the parole report is $217,000.00, leaving an excess of funds on hand of $23,000.00, which is carried forward into the subsequent year. However, that forward sum is not shown. While it is indicated in disbursements, it is not deducted. So there may be a duplication to that extent.

290 The total sum of those funds or items on hand carried over is $52,767.90.

Q. Referring to these books which are here as Exhibits A-1 and A-2, were they examined by anybody connected with the Internal Revenue Service?

A. Yes, sir. They were examined by Special Agent Stonesifer and several other agents who were making their examination at the same time.

Q. About when was that done?

A. Sometime prior, a considerable time prior to the return of the indictment. I couldn't tell you exactly when.

Q. Were they in the hands of any other governmental agency?

A. They were turned over to the Kefauver Committee, and they retained them for some time.

Q. Now, were you the attorney for Mr. DeLucia when he made a certain settlement with the Government with reference to the Government's claim of further taxes being due?

A. What kind of tax, you mean income or gift tax?

Q. Income tax.

A. Yes, I was.

291 Q. Have you at my request made a summary of the income adjustments thereto and Commissioner's adjustment to others with reference to that transaction?

A. I did.

By The Court: This proposed or alleged settlement is certainly not a part of your offer of proof, is it?

By Mr. Stewart: Yes, because I am asking your Honor not to allow them to go back into this period. You have to know there was such a thing as the settlement and the nature of it, briefly.

I will ask that these documents be marked Defendants' Exhibits C-1, C-2, C-3, C-4 and C-5 for identification respectively.

(Thereupon said documents were marked Defendants' Exhibits C-1, C-2, C-3, C-4 and C-5 for identification.)

292 By Mr. Stewart:

Q. In connection with Exhibit C-1, I show you now Exhibits C-2, C-3, C-4 and C-5, and ask you to tell the Court what those are.

A. These are copies of the 90 day letter which was part of the petition filed in the Tax Court of the United States at Washington, D. C. in the matter of Paul DeLucia. That is Exhibit C-2.

Exhibit C-3 is a similar document from the Tax Court of the United States relating to the distribution and income of George E. Brown.

Exhibit C-4 is a similar letter from the Tax Court of the United States—I mean certified copies of the documents filed in the Tax Court, being the 90 day letter, which is a part of the petition filed by each of these individuals.

Exhibit C-4 represents a similar certified copy of the 90 day letter which was a part of the petition filed in the Tax Court of the United States in the matter of Frank Nitto.

Exhibit C-5 represents a certified copy from the Tax Court of the United States of 90 day letter which was a part of the petition filed in the matter of Louis Cam-
293 pagna in the Tax Court of the United States.

Q. That settlement, did it result in a judgment in the Tax Court which was entered by agreement?

By The Court: Why are all these names different?

By Mr. Stewart: It is a group. They were all in on the thing, and then there had to be a distribution as to the income. The only way you could understand how much was allocated by the Government to Paul DeLucia, you have to understand there were others in it, and they were divided up, and that is shown on the summary, Exhibit C-1.

I will have Mr. Bernstein explain that in a moment.

By Mr. Stewart:

Q. I just want to know if that settlement resulted in a judgment?

A. In the matter of DeLucia and Campagna which I handled, those resulted in an ultimate stipulation of
294 settlement with the Tax Court of the United States.

Q. Approved by the court?

A. And approved by the court.

Q. And judgment entered?

A. Correct.

By Mr. Barnett: May I ask, Mr. Stewart, if those exhibits are the 90 day letters alone or the complete pleadings in the Tax Court?

By The Witness: They are that portion of the pleadings which only relate to the 90 day letter which are certified.

By Mr. Barnett: Is the Tax Court petition in there?

By The Witness: No, the Tax Court petition is not included.

By Mr. Barnett: Just the 90 day letter?

By The Witness: Just the 90 day letter, which was a part of the petition.

By Mr. Barnett: All right.

By The Witness: Incidentally, the 90 day letter is required to be made as an exhibit to a petition filed
295 in the Tax Court.

By Mr. Stewart:

Q. Now, will you take up Exhibit C-1 and describe to the Judge what you have done there in the way of setting this out as an analysis?

A. The Government furnished Mr. Stewart with copies of the income tax returns of Mr. DeLucia for the calendar years 1935 to 1943. I believe they were photostatic copies.

From that I have indicated annually the income from 1935 to 1943, inclusive, of the net income reported on the income tax returns for those years.

296 By The Court: Pardon me, please.

Are there any jurors here in this case sitting in the back of the court room?

I don't want any jurors to be sitting here. You will please come back at 2:00 o'clock.

By Mr. Stewart:

Q. Go ahead,

A. The second column indicates other and miscellaneous income indicated on the return. In other words, this is the portion of the total income indicated on the return for each of the respective years. It is indicated in the return as either being other and miscellaneous or miscellaneous income, and I made a special column of that.

The third column indicates the adjustments per Commissioner's ninety day letter, that is, adjustments made by the Commissioner of Internal Revenue in denying the original ninety day letter which was directed to Paul DeLucia.

The fourth column indicates the total of columns 2 and 3. That would be other and miscellaneous income and adjustments per Commissioner's ninety day letter.

297 For example, in 1935, the adjustments on the letters, indicated on the ninety day letter, is indicated as being $44,757.06. In the next column it is reported as being $44,757.06.

In 1936, a similar amount in column 4 is similar to that indicated in the ninety day letter. However in 1937 and 1938, you will find the total of miscellaneous income in 1937 of $39,400.00 plus the sum shown in the next column, being the ninety day letter from the Commissioner, as being $85,046.77, which totals $124,446.77.

Now this total of $124,446.77—I am a little ahead of myself. The column in 1935, total of columns 2 and 3, is $44,757.06. This is identical with the exception of two cents of the amount indicated that Louis Campagna received in 1935 and identical, with the exception of being six cents greater than the distribution to Frank Nitto, which is six cents greater, and to George Brown $36,067.78.

Of course, George Brown's interest was less than that of Frank Nitto or Louis Campagna or DeLucia's. He
298 received one-sixth, and that one-sixth and two-ninths result in a ratio of four-eighteenths.

299 By The Court: Is that a partnership we are talking about?

By The Witness: These are sums allegedly distributed, which the Government had originally distributed to these men from the New York proceeding, from the moving picture extortion case.

Now I have a notation indicating that in the ratio in these cases that allegedly went to Campagna and Nitto and to DeLucia, the ratio was two-ninths.

The only reason that those don't jibe across is that there was one payment in 1935 where the ratio was different, as to $20,000. The first $20,000 was distributed 50 per cent to Paul DeLucia, Louis Campagna and Frank Nitto and 50 per cent to George E. Brown and William Bioff.

I indicated in my notation if that sum were deducted from the totals, that first $20,000 on the allocations, that the proportions carried across would equalize two-
300 ninths, two ninths an one-sixth.

In 1936 the same situation exists where the sums in the 90 day letter to Mr. DeLucia are approximately the same amount. It differs in pennies, in certain instances, where they divided up pennies, sometimes eight cents and sometimes three cents' difference.

So we find that the distribution in the 90 day letter and a total of the columns 2 and 3 are equal, practically alike, with the sum indicated in the 90 day letters to Mr. Campagna, Mr. Nitto and to Mr. Brown, with the exception that he only received a one-sixth interest as compared to

the two-ninths' interest.

In 1938, the sum of other and miscellaneous income indicated on the return is $56,950. The Government in its 90 day letter indicated only $16,877.80.

Totalling those two sums in columns 2 and 3, they total $73,827.80, and are practically identical to those dis-
301 tributions to Campagna, Nitto and George Brown, with the exception that as to that year there is the one-sixth instead of two-ninths.

Any time I indicate distributions to George Brown, it will always be one-sixth as compared to two-ninths to the others.

In 1939 and 1940 we see a difference. While the Government distributed to Campagna the two-ninths' interest of $42,051.91 and to Nitto alike, and to George Brown his one-sixth interest of this total sum, it made no distribution in the 90 day letter—

By The Court: By "distribution," you mean charge?

By The Witness: Charge, I mean.

They made no allocation of any sum to DeLucia for 1939 because, as indicated, his return shows $73,058.17 as be-
ing distributed, indicated in his return as being from 302 miscellaneous sources.

However, the sheets that I saw in the Government's possession in the Internal Revenue Office indicated originally a distribution to him of his two-ninths' interest as well as to Campagna and Nitto and to the others.

The same situation exists for 1940. While Campagna and Nitto and Brown are indicated as receiving $35,910.98, no distribution was made to them in the 90 day letter because in those years of 1940 and 1941—this is my assumption—the other and miscellaneous income was far in excess of that.

However, it is noted that in 1938 and 1939, an audit was made of the income tax return of Mr. Paul DeLucia, which resulted in an increase in other and miscellaneous
303 income by a Revenue agent from the figure indicated on the return of $56,950, which he indicated as other and miscellaneous, to $59,749.72.

Why the Government did not give credence to that and decrease this column 3, that $16,877.80, I don't know, unless it was an oversight.

304 Now in 1939, the Revenue Agent increased in a prior examination—that is back in 1940, indicating the income to be $78,043.94. Now it will be observed that 1940, 1941, 1942 and 1943 on this exhibit, the taxpayer indicates substantial sums of money from other and miscellaneous sources.

Naturally for 1939 and 1940, they don't pick up any distribution to him, while the distributions shown as to the others was for a sum totaling for those periods in question of about $44,000.00. The original document that I saw had a like distribution to Mr. DeLucia, a like distribution of $44,000.00—

By The Court: What year are you talking about?

By The Witness: All the years, from 1935 to 1940.

By The Court: For 1940?

By The Witness: They showed an original distribution on their work sheets of approximately the same
305 sum of money differing as to pennies—I couldn't say six cents up or six cents down.

As also indicated, I have mathematically explained below there in my note. Incidentally, I also make a notation there that the Revenue agent's report for 1938 and 1939 discloses that the sum of other and miscellaneous income results from gambling and other income.

Therefore, there is no consistency in the Government's deduction, allowing of the sum, the miscellaneous income reported from the total sum which was allegedly distributed to him.

By The Court: Are you now questioning the figures of the Government in this alleged settlement?

By The Witness: No. This settlement that we made, your Honor, was not predicated upon income or upon ability to pay.

By The Court: A compromise, I presume?

By The Court: No, no compromise. It was a
306 question of pure across-the-table horse trading.

By The Court: Which figures are you questioning now, those that were submitted to the Government or that the Government charged?

By The Witness: We are questioning primarily on this report, your Honor, that the original allocation by the Government—

By The Court: As of what year?

By The Witness: For the years 1935 to 1940 inclusive to Mr. DeLucia was the same amount as indicated to Campagna and Nitto.

By The Court: Are those years in question before me now?

By The Witness: Yes, they are. Those are all part of this net worth system.

By Mr. Barnett: There is no charge of evasion with respect to those years, your Honor.

307 By Mr. Stewart: The point is going to be whether or not the Government is following these leads and giving us credit for that money, and I am coming to that with another transcript where this was put up to Government agents at a conference.

I have a transcript of it, and at that time they told us they were not giving us credit for this money.

Are you finished?

By The Witness: As best I can here.

By Mr. Stewart:

Q. I will ask you, Mr. Bernstein, were you present in the office of the United States Treasury Department, Intelligence Division, Chicago Office, on September 1, 1954, at 2:00 o'clock p.m., when there were present: T. N: Smith, Group Supervisor; Richard F. Stonesifer, Special Agent; John A. Scholz, Special Agent; yourself and me and a court reporter?

A. I was, yes, sir.

There was also a stenographer there.

308 By Mr. Barnett: Was not the taxpayer, Mr. DeLucia, there?

By Mr. Stewart: Yes, Mr. DeLucia was there.

By Mr. Stewart:

Q. Was a transcript made of what took place there, what was said by me and what was said by you and what was said by the agents?

A. That is right, there was.

Q. Did you examine that transcript after it was written up by the reporter and it was fresh in your mind? Did you examine the transcript?

A. Yes, I did.

By Mr. Stewart: I will ask the reporter to mark this as Defendants' Exhibit D for identification.

(Thereupon said document was marked Defendants' Exhibit D for identification.)

By Mr. Stewart:

Q. Does that printed copy substantially state what happened?

By The Court: Did Mr. Barnett get a copy?

309 By Mr. Barnett: I had previously received a copy, your Honor.

There is only one comment I would like to make about the copy. As your Honor noted, Mr. DeLucia was present at this conference, but his name is not listed among those present.

By Mr. Stewart: That was an oversight. I know he was there, and the transcript itself shows he was there.

By The Court: The witness said he was there.

By Mr. Stewart: Yes.

By The Witness:

A. I have read this, and it appears to be substantially what was stated there, to the best of my recollection.

By Mr. Stewart:

Q. Were you also present in the same office at a later date, November 19, 1954, 2:40 p.m., when a conference was held in the Treasury Department, and there was present: Joseph B. King, William M. Ruggaber, Thomas Smith, yourself, and Mr. Bulger?

310 A. I was, yes, sir.

Q. At that time was a court reporter present to take down what was said there?

A. The Government had its own stenographer there. I don't know if she was a court reporter.

Q. Was that transcript later furnished to the defendant and he signed it?

A. The transcript was prepared and submitted to the defendant Bulger, and a copy was given to me.

By Mr. Stewart: I will ask that this be marked Defendants' Exhibit E for identification.

(Thereupon said document was marked Defendants' Exhibit E for identification.)

By Mr. Stewart:

Q. I will hand you Defendants' Exhibit E and ask you whether or not that is a substantial representation of the conference that was held at that time and place.

A. I have compared this with the original and it appears to be substantially accurate, excepting the deletions that were made, but this is a corrected copy.

311 Q. Do you remember when the Kefauver Committee was holding hearings and they were called "Investigation of Organized Crime in Interstate Commerce"?

A. I do, sir.

Q. I hand you a volume, which I am not asking to be marked because I have the part which I am going to put in in separate printed form, but that is an official report of the committee itself, is it not?

A. This is the official report put out by the United States Government Printing Office.

By Mr. Stewart: There is a copy already in the files on preliminary motion, your Honor.

I will ask that this be marked Defendants' Exhibit F for identification.

(Thereupon said document was marked Defendants' Exhibit F for identification.)

By Mr. Stewart:

Q. At my request, did you compare the extracts from that committee hearing as reported and with the original report, calling attention to the portions of the testi-

312 mony given by Paul DeLucia before that committee?

A. I compared—that is, I didn't compare—I examined the original proofs and this copy with the official copy, and these are true excerpts from it.

By Mr. Barnett: That is Exhibit F, is it?

By Mr. Stewart: Yes.

By Mr. Barnett: I think it should be pointed out that there are whole sections of the report that are omitted, is that right?

By Mr. Stewart: That is right.

By Mr. Stewart: And these are merely selected excerpts?

By Mr. Stewart: Yes.

By The Court: I think Mr. Stewart said so.

By Mr. Stewart: The full copy is already in the files, and I might say the Court takes judicial notice of it because it was an exhibit in another piece of litigation
313 we had in this building in another case. So I assume that Mr. Barnett has a copy of the official report.

By Mr. Barnett: I have.

By Mr. Stewart: If there is anything he wants to add, of course, he is free to bring it in here and see whether or not your Honor will admit it.

By Mr. Barnett: Do we have to print it, Mr. Stewart?

By Mr. Stewart: No, unless you want to ask me to pay for it. I might do that for you.

That is all now that I care to ask.

By Mr. Barnett: Your Honor, am I expected to cross examine him now?

By The Court: If you want to. I have indicated my ruling.

By Mr. Barnett: I see no necessity for my cross examining.

By The Court: If you do cross examine him, it will be without prejudice to your original objection, if you have any.

314 By Mr. Stewart: There is one thing I left out. I might ask this, and it might give you something to cross examine about.

By Mr. Stewart:

Q. There was another settlement you made with the Government, was there not, concerning Paul DeLucia's income tax and the others associated with him?

A. The other was not an income tax. The other was a gift tax.

Q. What year was that made?

A. The gift tax—I believe you have the exhibits on that. I mean it relates to somebody else, but they were identical years.

Q. Is this it?

A. No, that is not it.

By Mr. Stewart: I will ask that these documents be marked Defendants' Exhibits G-1 and G-2 for identification.

(Thereupon said documents were marked Defendants' Exhibits G-1 and G-2 for identification.)

By Mr. Stewart:

Q. Will you tell the Court what Exhibits G-1 and
315 G-2 might be?

A. G-1 relates to the decision rendered on the gift tax matter of Louis Campagna.

Q. Is it a decision, a copy?

A. Yes, it is the decision.

By Mr. Barnett: What is the number?

By The Witness: Docket No. 33383, entitled Louis Campagna, Petitioner *vs.* Commissioner of Internal Revenue, Tax Court of the United States.

By Mr. Stewart:

Q. Was there a like decision in Paul DeLucia's case?

A. There was a decision likewise rendered in the Tax

Court of the United States in the matter of Paul DeLucia, and this refreshes me solely as to the date. The docket number may have been one higher or lower than this, I don't remember exactly the number, but it was entered on the same date. Whether it was the exact amount—I believe it was, but that amount I am not definite about, but it was a gift tax assessment.

316 Q. Read the amount from there so we will know what you are talking about.

A. Well, the decision provides:

"Order and judge liability for Federal gift tax in the amount of $34,425 and penalty under Section 3612 D 1, Internal Revenue Code, in the amount of $8,606.25 plus interest as provided by law due for the taxable year 1946 from petitioner as a donee and transferee under Sections 1009, 1025, Internal Revenue Code. It is further ordered that the petition be and it is hereby dismissed."

By The Court: Who was the petitioner?

By The Witness: This case was Campagna, and there was a similar decision in the DeLucia case. They were companion cases.

By Mr. Stewart:

Q. Was the money paid?

A. After filing the petition, I had some conferences and we paid part of the funds, and in a subsequent

317 period we paid the balance, but the sum indicated was the sum that was fully paid.

Now Exhibit G-2 is what is commonly known as the 90 day letter, which was directed to Mr. Paul DeLucia, donee and transferee, from the Commissioner of Internal Revenue, relating to the same subject matter, the petition of which was filed in the Tax Court of the United States at the same time the petition was filed in the matter of Louis Campagna and settlements were made in like manner.

By Mr. Stewart: That is all.

Cross Examination.

By Mr. Barnett:

Q. I would just like to ask Mr. Bernstein a couple of questions, if I can do that without prejudicing my position that none of this is relevant.

By The Court: All right.

By Mr. Barnett:

Q. You represented Mr. DeLucia in the tax matter involving the years 1935 to 1940, isn't that correct?

318 A. No, Mr. DeLucia's tax matters were only for the calendar years 1935 to 1938. The Government for some reason did not allocate—they did on the work sheet, but not on here.

Q. At any rate, you represented him in that transaction?

A. I did, yes, sir.

Q. And that took place when—the year? I don't care about the date.

A. I believe—

Q. 1946, wasn't it?

A. No, it was before that.

Q. When was it started?

A. I think he received the jeopardy assessment, I believe it was in 1945. I am guessing at that. I think that is when it was.

Q. I see. That is when you started representing him?

A. Shortly after.

Q. He received the first notice?

A. After the jeopardy assessment was given to the wife, and I represented his wife first, and then him subsequently.

319 Q. So you appeared at conferences in the Internal

Revenue Bureau in order to effect a settlement of that tax case against Paul DeLucia, did you not?

A. Yes, having in mind that Wilcox case at that time, too, if you recall.

Q. You attended conferences in the Bureau with Mr. Clayton Marsh, is that correct?

A. I did, yes, sir.

Q. And those conferences occurred in 1946?

A. It was subsequent to my filing the petition attachment. I wouldn't be certain as to the date.

Q. The actual date of settlement was March, 1946 and payment was made in October of 1946, isn't that correct?

A. It may have started in 1945. I mean, anytime between 1945 and 1946.

320 Q. But you were representing Mr. DeLucia, were you?

A. Yes, sir, I was.

Q. And the settlement was based on the receipts by DeLucia of $114,000.00 in income, was it not, for several years?

By Mr. Stewart: Which settlement are you talking about, the gift tax?

By Mr. Barnett: No.

By The Witness:

A. The income tax case. It was based on the assessment that was made by the Commissioner of Internal Revenue.

By Mr. Barnett:

Q. All right. What was the total amount of assessment made by the Commissioner?

A. I believe you have a ninety day letter on that. I can tell you. You mean the amount of the settlement?

Q. No, I want to know the total amount of income that the Government charged in that assessment letter that Mr.

DeLucia had received, and to refresh your recollection, I think the total amount was $227,000.00, was it not?

321 A. That sounds right.

Q. That is about right?

A. That sounds about right, yes.

Q. Then you made an agreement with Mr. Marsh of the Internal Revenue Service to pay an amount of tax which was based on just approximately half of that $227,000, figure, did you not?

A. I would say that is about right.

Q. In other words, this $114,000.00?

A. We just—

Q. That was the income, wasn't it?

A. We just cut it in two. I think that is what it was, about 50 per cent.

Q. All right. And all that took place in 1946?

A. Between 1945 and '46, whatever the period was.

Q. The settlement was in 1946?

A. That is right, yes, in 1946.

Q. Then there was a gift tax matter that came up later?

A. That is right.

Q. When was that, 1950?

A. 1951. The ninety day letter was received in 1951.

Q. And you negotiated with the Bureau on the gift

322 tax, I believe, did you not?

A. Yes, and I think that was settled in 1953, basing it on the decision that was entered.

Q. You were attorney for Mr. DeLucia at that time?

A. I was, yes, sir, as transferee.

Q. In between those two dates, there was an audit by a revenue agent named Armstrong, was there not?

A. There was, yes, sir.

Q. In 1947?

A. I think it was the early part of 1947, something around there.

Q. And it covered the years 1941 to 1943 inclusive?

A. No, 1942 and 1943.

Q. 1942 and 1943, but not 1941?

A. That is my opinion.

Q. And you represented Mr. DeLucia at that time, is that correct?

A. I did, yes, sir.

Q. You have testified or you have remarked—yes, you have testified about a number of documents here which concern the tax years 1948, '49 and '50, is that right? 323 These disbursements and income figures based on the books.

A. Oh, on the parole reports. I have indicated distributions, and I have testified here that these documents relate to the allocation of sums shown on the parole reports for 1948 to 1950, and I also indicated they indicate three months in 1947.

Q. When did you first start representing Mr. DeLucia?

A. It was subsqeuent to the ninety day letter which would be subsequent to 1945.

Q. That would be in 1945?

A. Correct.

Q. At that time he was in the penitentiary, was he not?

A. That is right, he was.

Q. In 1947 when you were representing him before Mr. Armstrong, he was still in the penitentiary?

A. That is correct.

Q. But you prepared certain income tax returns for him during those years, did you not?

A. I only prepared—

Q. What years did you prepare?

324 A. I believe it was—what years do you mean?

Q. The first return that you prepared for him through the last return.

A. I believe the first return I filed for him may have been in 1946.

Q. That would be the return for the calendar year 1945?

A. I believe that is so, but I am not certain of that.

Q. Then you prepared the 1946 return?

A. I believe I did. I am not positive of that.

Q. You prepared the 1947 return?

A. 1947, I believe I did.

Q. The 1948 return?

A. 1948, '49 and '50.

Q. Now you say you only believe you prepared them. You don't know that you prepared them?

A. Now you are asking me to try to recall these things. I believe.

Q. Do you know definitely which ones you did prepare?

A. I would say definitely I prepared the ones for 1948 and subsequent.

Q. 1948 and subsequent?

325 A. Yes.

Q. You are not sure, but you think you may have prepare the ones beginning with 1945, is that correct?

A. 1945 or 1946, one of those two.

Q. But you know you prepared no return earlier than 1945?

A. Yes, sir, I know that definitely. I am pretty sure I didn't. I don't recall any.

By Mr. Barnett: That is all.

By The Court: All right, Mr. Stewart.

326 By Mr. Stewart: I have no more questions.

(Witness excused.)

By Mr. Stewart: Your Honor, we would like to turn these exhibits over to the Clerk because we would like to have your Honor have jurisdiction of them for this reason: I would like to have Mr. Barnett have access to them, if he would like.

By The Court: It may be so ordered.

By Mr. Stewart: We will turn them over to the Clerk.

By The Court: These have not been received. They have been marked.

By Mr. Stewart: That is right, but I would like to have them in the custody of the Clerk.

By The Court: They may be in the custody of the Clerk.

By Mr. Stewart: Of course, that is with the understanding that Mr. Barnett can take them out on receipt, if he likes, you know. That is all right.

By The Court: That is right. By leave of Court?

327 By Mr. Stewart: Just his receipt is enough, so long as we know where they are.

By The Court: I just want to know for the record. I don't care.

Now, your motions?

By Mr. Stewart: I have several motions.

By The Court: All right, make them.

By Mr. Stewart: The first one is that I want your Honor to rule that the prosecutor should be restricted in his opening statement and not refer to the net worth method without making some showing here that these books are not to be relied upon or not accurate.

I think that under the cases that I have studied and the one that I read, the Government should at least make a showing to your Honor that they have a right to use the net worth method.

By The Court: The motion will be denied.

By Mr. Stewart: Then I would like to ask your Honor to restrict the prosecutor in his opening statement and not permit him to go back of the time of the settlement because that was—

By The Court: I would like to hear from you, Mr.
328 Barnett. I am not familiar with the law on that. It occurred to me that that is one question.

By Mr. Barnett: As Mr. Stewart has pointed out to you, your Honor, there is a question here as to whether or not the funds that were disbursed in 1948, '49 and '50, the funds disbursed by the taxpayer, came from currently taxable income or whether they came from money that he had on hand at the beginning of that period.

That is the $300,000.

This tax settlement he is talking about was the situation where the Government charged him in an earlier year, that is for the years 1935 through 1938, with having received income, and he settled on the basis of half of the income the Government charged he received.

Now when he says we shouldn't go back into those back years, we only go back into those back years in order to prove the man's financial history.

By The Court: But not income. The years before me are what?

By Mr. Barnett: The years before you are 1948, '49, and '50. Those are the years that are charged in the
329 indictment.

Now we are entitled under all of the cases to go back as far as we can,—

By The Court: The motion will be overruled.

By Mr. Barnett: (Continuing) —into this man's history.

By The Court: Motion is overruled.

• • •

349 Opening Statement on behalf of Government by Mr. Barnett.

• • •

371 Opening Statement on behalf of Paul DeLucia by Mr. Stewart.

• • •

404 Opening Statement on behalf of Joseph Bulger by Mr. Green.

• • •

428 By The Court: You will have a general objection to all the testimony that pertains to one defendant; that it not be prejudicial to the other in any way at all n admissible until there is some connection.

429 By Mr. Stewart: The age was 22 or 23, if that will serve your purpose.

By Mr. Barnett: Yes.

By Mr. Stewart: We will agree, at the age of 22 or 23 Paul DeLucia entered this country and he became a citizen on the date that has been mentioned here.

By Mr. Barnett: No, I am not going into the citizenship at all, I am just going to have him entering this country.

By Mr. Stewart: All right. We will agree with him that he came into this country at the age of 23, at the date mentioned.

By Mr. Barnett: August 10, 1920.

By The Court: And I will sustain your objection, Mr. Gorman, that it has no bearing on Mr. Bulger.

By Mr. Gorman: Will the jury be so instructed as we go along?

By The Court: Not at this time. I will instruct the jury at some time or other that the testimony will not be binding on one as against the other unless it is connected up.

430 By Mr. Green: Might we have such an instruction at the conclusion of the witness, that if there is no connection the jury will bear that in mind until such time as the connection is established, if connection is established?

By The Court: You may renew your motion to every bit of evidence but I am inclined to avoid it. I say, let a general objection stand. If you make your objection I will comment on it that such an objection will stand throughout the testimony which is not connected up with the other witness and that I reserve my ruling on it.

By Mr. Barnett: If there is any advantage, in so far as everybody in concerned, your Honor, there will be a substantial amount of evidence put in here initially concerning the history of Mr. DeLucia, which we will expect to connect up later.

By The Court: Oh, yes. I will reserve my ruling all the way down the line until the end.

By Mr. Stewart: Let us agree that when the jury is called in, Mr. Barnett will state the substance of our agreement.

By The Court: Yes.

By Mr. Barnett: May I have just a moment?

431 By Mr. Gorman: If your Honor please, we will make our initial objection in the presence of the jury and your Honor will comment?

By The Court: Yes. I will comment and reserve my ruling.

By Mr. Green: Thank you.

* * *

434 By The Court: All right. Bring out the jury.

(Thereupon the following further proceedings were had in open court in the presence and hearing of the 435 jury, as follows:)

By The Court: Good morning, ladies and gentlemen.

Proceed, Mr. Barnett.

And thereupon, the Government, to maintain the issues on its behalf, introduced the following evidence to wit:

By Mr. Barnett: Your Honor, I have some stipulations which I would like to read to the jury, if I may.

436 Ladies and gentlemen, it is hereby stipulated and agreed by and between Paul DeLucia and Joseph Imburgio Bulger, defendants herein, and the United States of America, the plaintiff herein, through their respective counsel, that any and all stipulations entered into herein are for the purposes of this case only; that both parties reserve the right to produce additional evidence in connection with any and all matters stipulated and that photostatic copies of original documents may be substituted for the original documents.

It is further stipulated and agreed by the parties that Paul DeLucia entered the United States on the 10th day of August, 1920, at which time he was either 22 or 23 years old.

It is further stipulated and agreed that on August 13th, 1947, Paul DeLucia was paroled from Leavenworth prison and that he remained on parole until March 7, 1954, at which time he was discharged from parole;

That Paul DeLucia prepared, executed and filed with the United States probation officer at Chicago, Illinois,

437 for each month during the tenure of his parole a Form 24, monthly parole report on which was reported his income and the expenditures for each said month.

It is further stipulated and agreed that Government Exhibits 4-A through 4-E, 5-A through 5-M, 6-A through 6-L, and 7-A through 7-L are true and correct photostatic copies of said parole reports, Form 24, which were filed by Paul DeLucia for the period August 13th, 1947 through December 31, 1950, inclusive.

438 By Mr. Barnett: Your Honor, at this time I would like to offer in evidence Government Exhibits 4-A to 4-E, 5-A through 5-M, 6-A through 6-L and 7-A through 7-L.

By Mr. Stewart: They are part of the stipulation, your Honor.

By The Court: They may be received in evidence.

(Said documents, so offered and received in evidence, were marked Government Exhibits 4-A to 4-E, 5-A to 5-M, 6-A to 6-L and 7-A to 7-L, both inclusive.)

By Mr. Gorman: In behalf of the defendant Joseph Bulger, we have an objection as to the materiality and relevancy of those exhibits as they pertain to Mr. Bulger.

By The Court: As I have stated to counsel, whatever evidence is introduced against one defendant and not connected up with the other defendant will not apply to the other defendant, and I will so finally instruct the jury. In the meantime, I am reserving my ruling.

Let the same objection stand, if you will. You have a right to renew it, but if you wish to make a general ob-
439 jection, let it so stand, and the same ruling will prevail throughout.

By Mr. Green: Very well, your Honor. We would like the record to show the same objection to the first portion of the stipulation, which was the entry of Mr. DeLucia and his age at that time.

By The Court: That is right.

By Mr. Green: Thank you.

By Mr. Barnett: Stipulation No. 2:

It is further agreed that Paul DeLucia filed Federal income tax returns at Chicago, Illinois, for the years 1934 through 1950 inclusive, with the exception of the year 1944, for which year no return was filed.

It is further agreed that the Government Exhibits Nos. 8, 9, 10, 11 and 12 are true and correct photostatic copies of the returns filed by Paul DeLucia for the years 1935 through 1939 inclusive, and that Government Exhibits 13, 14, 15, 16, 17-A, 17-B, 18, 19, 20, 21 and 22 are the original returns filed by Paul DeLucia for the years 1940 through 1950 inclusive.

It is further agreed that on February 5, 1947, Paul DeLucia filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund, Form 843, in connec-
440 tion with income taxes paid by Paul DeLucia on his 1943 return.

It is further agreed that Government Exhibit No. 23 is the original Form 843 filed by Paul DeLucia on February 5, 1947.

Your Honor, at this time I am offering Government Exhibits for identification 8, 9, 10, 11, 12, 13, 14, 15, 16, 17-A and 17-B, 18, 19, 20, 21, 22, 23 and 24.

By Mr. Stewart: They are part of the stipulation, your Honor.

By The Court: They may be received.

(Said documents, so offered and received in evidence were marked Government Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 17-A, 17-B, 18, 19, 20, 21, 22, 23 and 24.)

Government Exhibit No. 20 (*being income tax return for the year* 1948:

(Stamp) Received Mar 9 1949 Coll. Int. Rev. 1st Dist. Ill.

File Code 81537730.

(Cashier's Stamp) 9054055.

Your exemptions

Your name—Paul De Lucia; 65 or over—No; Blind—No a. Number of exemptions for you—1.

Wife's (or husband's name)—Nancy De Lucia; 65 or over—No; Blind—No b. Number of her (his) exemptions—1.

Paul De Lucia, Jr.—Son; Anthony De Lucia,—Son.

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above)—4.

3. Enter here the total amount of your dividends ..273.71

5. If you received any other income, give details on page 2 and enter the total here .....—19,218.42

6. Add income shown in items 2, 3, 4 and 5, and enter the total here ..... —18,944.71

7. Enter your tax from table on page 4, or from line 18, page 3 ..... $ None

(B) By payments on 1948 Declaration of Estimated Tax $400.00

Enter total here 400.00

10. If your payments (item 8) are larger than your tax (item 7), enter the Overpayment here ..... $ 400.00

If you filed a return for a prior year, what was the latest year? 1947.

To which Collector's office was it sent? 1st Dist. Illinois.

To which Collector's office did you pay amount claimed in item 8(B), above? 1st Dist. Illinois.

Is your wife (or husband) making a separate return for 1948? No.

(Signature of person, other than taxpayer, preparing this return) —*Eugene Bernstein*

(Signature of taxpayer)—*Paul De Lucia.*

(Signature of taxpayer's wife or husband if this is a joint return)—*Nancy De Lucia.*

22. Net profit (or loss) (line 1 less line 21) Form 1040-F ..... —19,221.42

3. Other sources (state nature)

Witness fee Amount 3.00 3.00

$—19,218.42

1. Enter amount shown in item 6, page 1. this is your Adjusted Gross Income ..... $—18,944.71

4. Multiply $600 by total number of exemptions claimed in item 1, page 1. enter total here ..... $ 2,400.00

9. 10. 11. 12. 13 ..... NONE

FORM 1040F UNITED STATES
SCHEDULE OF FARM INCOME AND EXPENSES

Name Nancy De Lucia and Paul De Lucia
Address 814 North Lathrop Avenue, River Forest, Illinois.

1. Sale of Livestock Raised—

Cattle	$ 300.04
Sheep	1,058.71
Total	$1,358.75

2. Sale of Produce Raised—

Grain Ex. A.	$22,079.86
Hay	255.00
Dairy products	485.05
Wool and mohair	91.59
Total	$22,911.50

3. Other Farm Income—

Sale of pipe	953.75
Sale of dead cows	6.00
Total	$ 959.75

Summary of Income and Deductions Computed on a Cash Receipts and Disbursements Basis

1. Sale of livestock raised	$ 1,358.75
2. Sale of produce raised	22,911.50
3. Other farm income	959.75
5. Gross Profits	$25,230.00
6. Expenses (from page 3)	$40,640.58
7. Depreciation (from page 3)	3,810.84
9. Total Deductions	$44,451.42

10. Net farm profit (line 5 minus line 9) to be reported on line 22, Schedule C, page 2, Form 1040 ..... Loss— $19,221.42

1. Items	2. Amount
Labor hired	$ 7,413.53
Feed purchased	2,949.29
Seed, plants, and trees purchased	3,574.24
Supplies purchased	204.52
Cost of repairs and maintenance	9,885.71

Cost of repairs and maintenance	9,855.71
Fertilizers and lime	2,778.80
Gasoline, other fuel and oil for farm business	2,907.89
Taxes	1,589.99
Insurance on property (except your dwelling)	317.58
Interest on farm notes and mortgages	3,649.34
Water rent, electricity, and telephone	1,248.49
Freight, yardage, express, and trucking	323.75

3. Items (Continued)	4. Amount (Continued)
Other farm expenses (specify):	
Weed Killer	$1,630.47
Miscellaneous	558.39
Harvesting oats	560.00
General	20.77
Trustees fee	25.00
Auditing, legal, etc.	1,000.00
Bank charges	2.82
Total of Columns 2 and 4 (enter on line 6 of summary on page 1 (cash basis) or line 7, page 2 (accrual basis)—	$40,640.58

1. Kind of property (if building, state material of which constructed)	3. Cost or other basis (do not include land or other nondepreciable property)	5. Depreciation allowed (or allowable) in prior years	7. Estimated life used in accumulating depreciation	9. Depreciation allowable this year
East Farm	$ 9,856.66	$3,871.09	15	$ 657.78
Cottage & Main House	1,500.00	584.33	15	100.00
Dairy Bldgs.	9,500.00	2,770.84	20	475.00
West Set of Bldgs.	3,800.00	2,216.34	10	380.00
Main House	14,107.46			
Capital Improvements	14,870.00	3,141.85	20	743.50
Tool Shed	696.33		20	26.10
Silos	2,539.20		20	42.31
Tractor, Wagons, etc.	19,589.74		10	753.25
Machiner & Equipment	5,835.89		10	632.90
Total (enter on line 7 of summary on page 1 (cash basis) or line 8, page 2 (accrual basis)				$3810.84

EXHIBIT A

NANCY DE LUCIA and PAUL DE LUCIA

812 North Lathrop Ave.
River Forest, Ill.

ADDENDA FORM 1040 F
YEAR 1948

SALE OF PRODUCE SOLD:

GRAIN:	
OATS	$3,008.58
CORN	10,256.28
SOEY BEANS	8,815.00
	$22,079.86

Government Exhibit No. 21 (*being income tax return for the year* 1949).

Received Feb. 2, 1950. (Stamp)
File Code 3019533.
Name—Paul De Lucia and Nancy De Lucia.
Home Address—814 No. Lathrop Avenue, River Forest, Ill.
Your exemptions:
Your name—Paul De Lucia; 65 or over—no; Blind—No.
a. Number of exemptions for you—1.
Wife's (or husband's) name—Nancy De Lucia; 65 or over—No; Blind—No.
b. Number of her (his) exemptions—1.
Paul De Lucia, Jr.—Son.
Anthony De Lucia—Son
Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) —4.
3. Enter here the total amount of your dividends $120.00

4. Enter here the total amount of your interest (including interest credited on savings accounts; also interest from Government obligations unless wholly exempt from taxation) 3.25

5. If you received any other income, give details on page 2 and enter the total here 2,406.20

6. Add income shown in items 2, 3, 4, and 5, and enter the total here loss 2,282.95

7. Enter your tax from table on page 4, or from line 18, page 3 .....$ None

9. If your tax (item 7) is larger than payments (item 8), enter Balance of Tax due here ..... $ None

If you filed a return for a prior year, state latest year 1948.

Where filed 1st District of Illinois.

To which Collector's office did you pay amount claimed in item 8 (B) above? 1st Dist. Illinois.

County in which you reside Cook.

Is your wife (or husband) making a separate return for 1949? No.

(Signature of person, other than taxpayer, preparing this return)—*Eugene Bernstein.*

(Signature of taxpayer)—*Paul De Lucia;* (Date) 1-30-50

(Signature of taxpayer's wife or husband if this is a joint return)—*Nancy De Lucia;* (Date) 1-30-50

State (1) nature of business—Farming; (3) business address—See Form 1040-F.

23. Net profit (or loss) (line 1 less line 22) ....—2,406.20

Total income (or loss) from above sources (Enter as item 5, page 1) .....$—2,406.20

General Property taxes—Resident and Lot $1,938.20

General Property taxes—La Porte Co. Ind. 662.38

Total Taxes 2,600.68

Total Deductions $2,600.68

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income .....$—2,282.95

2. Enter Deductions. If deductions are itemized above, enter the total of such deductions. If adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of 10 percent of line 1, above, or $1,000, whichever is the lesser, or $500 if this is the separate return of a married person 2,600.00

3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income .....$ None

4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here 2,400.00

8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax .....$ None

FORM 1040 F UNITED STATES

SCHEDULE OF FARM INCOME AND EXPENSES

Name—Paul De Lucia; Address—814 No. Lathrop Ave. River Forest, Ill.

Location of farm or farms—Kendall Co., nr. Newark, Ill; Number of acres in each farm—1104.

1. Sale of Livestock Raised

Kind	Amount
Cattle	$ 8,386.33
Sheep	111.64
Swine	9,517.80
Total	$18,015.77

2. Sale of Produce Raised.

Kind	Amount
Grain Ex. 1.	$22,064.34
Dairy products	863.42
Total	$22,927.76

3. Other Farm Income.

Items	Amount
Ins. on dead pig	30.60
Sale of Stanchion	30.00
Patronage Dividend	968.98
Miscl.	1.28
A.A.A. Program	242.04
Co. Mutual Fire Ins. Co.	39.73
Total	$1,332.63

1. Description	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	6. Profit (column 3 plus column 5 minus column 4
21 Cows, 6 Cows, and 3 Bulls	4/ 1/48	$ 5678.32	$ 6000.00	
25 Bred Gelts	7/17/48	1439.40	2500.00	
2 Sows	7/16/48	145.45	200.00	
50 Steers	12/ /48	10272.91	8424.64	
1 Boar	12/ /49	90.00	97.50	
Total (enter on line 4 of summary below)		17626.08	17222.14	$ 403.94

Summary of Income and Deductions Computed On A Cash Receipts and Disbursements Basis

1. Sale of livestock raised	$18015.47
2. Sale of produce raised	22927.76
3. Other farm income	1332.63
4. Profit on sale of livestock and other items purchased	403.94
5. Gross Profits	$42680.10
6. Expenses (from page 3)	$36148.04
7. Depreciation (from page 3)	8938.26
9. Total Deductions	$ 45086.30
10. Net farm profit (line 5 minus line 9) to be reported on line 22, Schedule C, page 2, Form 1040	$ 2406.20

Farm Expenses for Taxable Year (See Instructions)

1. Items	2. Amount
Labor hired	$ 9344.75
Feed purchased	4657.66
Seeds, plants, and trees purchased	1675.50
Supplies purchased and small tools	344.13
Cost of repairs and maintenance	3292.56
Gasoline, other fuel and oil for farm business	3945.88
Taxes	1768.79
Insurance on property (except your dwelling)	676.60
Interest on farm notes and mortgages	3681.98
Water rent, electricity, and telephone	1381.61
3. Items (continued)	**4. Amount (continued)**
Other farm expenses (specify):	
Bank charges	2.06
Hauling	397.49
Miscl. farm expense	651.39
Other farm expense	810.26
Trustee and Professional	750.00
Loss on Sale of Tractor	1767.38
Loss of casualty	1000.00
Total of Columns 2 and 4 (enter on line 6 of summary on page 1 (cash basis) or line 7, page 2 (accrual basis))—	$36148.04

PAUL R. DE LUCIA
814 N. LATHROP AVE.
RIVER FOREST, ILL.

ADDENDA, FORM 1040-F, YEAR 1949

EXHIBIT 1

INCOME FROM SALE OF GRAIN:

Corn	$7,588.50	
Wheat	6,550.55	
Soy Beans	7,925.29	$22,064.34

EXHIBIT 2

FARM EXPENSE:		
Interest Paid—		
Forest Park National Bank	$ 330.00	
Prudential Insurance Co. (Mtg. Loan)	3,320.00	
Continental Ill. National Bank Notes on Tractor	31.98	$ 3,681.98
MISCELLANEOUS FARM EXPENSE:		
Insectide & Hog Oil	$ 21.50	
Straw	57.75	
Boarding	341.00	
Mounting Tires-Tractor	32.25	
Digging	90.50	
Filter Powder	9.96	
Veterinarian	25.00	
Batteries & Tires	73.43	$ 651.39
OTHER FARM EXPENSE:		
Shelling Corn	$ 94.85	
Paint	166.99	
2 Tractor Tires	48.38	
Farm Bureau Dues	15.00	
Boarding	108.00	
Machinery, Parts, Repairs, etc.	274.44	
Digging	67.69	
Veterinarian	30.00	
X'mas Seals	5.00	810.26
LOSS ON SALE OF TRACTOR:		
HD. 7 TRACTOR ACQUIRED 5/25/48		
Cost	$7,500.00	
Less: Depreciation Reserve	$937.50	
Allowed on sale	4,795.12	5,732.62 $1,767.38

LOSS BY CASUALTY:

Loss occasioned by death of livestock—5 cows, part of lot purchased 4/1/48 Cost **$1,000.00**

PAUL R. DE LUCIA
814 N. LATHROP AVE.
RIVER FOREST, ILL.

ADDENDA, FORM 1040-F, YEAR 1949

DEPRECIATION SCHEDULE:

	Rate	Acquired	Cost	Reserve 1/1/49	Depre. 19r9	Reserve 1/1/50
Improvements						
Main House	0	2/ /42	$14213.42			
East Farm	3%		10987.02	$4528.87	$724.10	$5252.97
Cottage across Main House	6 2/3		15000.00	684.33	100.00	784.33
Dairy Farm Buildings	5%		9500.00	3245.84	475.00	3720.84
Dairy Farm Building (Well)	4%		951.00		38.04	38.04
West Set of Buildings	10%		3800.00	2596.34	380.00	2976.34
Capital improvements	5		14870.00	3885.35	743.50	4628.85
Newhouse (architects)	5		450.00			
Buildings Tool Shed			696.33	26.10	34.80	60.90
Silos	5		2956.60	42.31	132.17	174.48
Barn	4		81179.19		3135.07	3135.07
Cow Barn	4		13929.23		260.15	260.15
Wells			5124.68			
Water Reservoir	4		3608.73		144.35	144.35
Fish Pool			2220.90			
Tractor-Wagon, Implements	10		40418.02	315.75	1687.49	2003.24
Machinery & Equipment (Curry)			5835.89	632.90	583.59	1216.49
				$15957.79	8438.26	24396.05

Note: The following items were received, however the same are not treated as being taxable income.

Farm Bureau—considered as loan settlement or personal injury	$8,657.22
	1,500.00
income tax refund	403.25
	$10,560.47

Government Exhibit No. 22 (being income tax return for the year 1950).

File Code 6584621.

(Stamp) 36—Received Mar. 5, 1951—Coll. Int. Rev. 1st Dist. Ill.—

No. 8.

Name—Paul De Lucia and Nancy De Lucia.

Home Address—812 Lathrop Avenue, River Forest, Illinois.

Your exemptions:

Your name—Paul De Lucia; 65 or over—No; Blind—No.

a. Number of exemptions for you—1.

Wife's (or husband's) name—Nancy De Lucia; 65 or over—No; Blind—No.

b. Number of her (his) exemptions—1.

Paul De Lucia, Jr.—Son.

Anthony De Lucia—Son.

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) —4.

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here.....Loss $—(9,838.82)

4. Add income shown in items 2 and 3, and enter the total here .....Loss $—(9,838.82)

5. Enter your tax from table on page 4, or from line 18, page 3 .....$ None

7. If your tax (item 5) is larger than payments (item 6), enter Balance Of Tax Here....$ None

If you filed a return for a prior year, state latest year —1949.

Where filed—First District of Illinois.

To which Collector's office did you pay amount claimed in item 6 (B), above? 1st Dist. of Ill.

County in which you reside—Cook.

(Signature of person, other than taxpayer, preparing this return)—*Eugene Bernstein.*

(Signature of taxpayer)—*Paul De Lucia.*

(Signature of taxpayer's wife or husband if this is a joint return)—*Nancy De Lucia.*

Schedule A.—Income From Dividends—Page 2.

Name and address of corporation declaring dividend—Bank of America	$	115.60
Enter total here	$	115.60
Net profit (or loss) from business or profession (from separate Schedule C); Farming—See Form 1040-F	Loss	—(9,954.42)
Total income (or loss) from above sources (Enter as item 3, page 1)	Loss $	—(9,838.82)

Itemized Deductions—For Persons Not Using Tax Table On Page 4 Or Standard Deductions On Line 2 Below—Page 3.

Taxes—Sales Tax (Est.)	$ 150.00	
General Property Taxes—		
Residence lot	1,850.00	
La Port Co. Indiana	150.00	
Total Taxes—	2,640.00	
Total Deductions		$2,640.00

2. Enter Deductions. If deductions are itemized above, enter the total of such deductions. If adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of 10 percent of line 1, above, or $1,000, whichever is the lesser, or $500 if this is the separate return of a married person $2,640.00

4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here $2,400.00

FORM 1040 F UNITED STATES
SCHEDULE OF FARM INCOME AND EXPENSES

Name—Paul De Lucia and Nancy De Lucia.
Address—812 Lathrop, River Forest, Ill.
Location of farm or farms—Kendall County, Newark, Ill.
Number of acres in each farm—1104 acres.

Farm Income For Taxable Period Computed On Cash Receipts and Disbursements Basis—

1. Sale of Livestock Raised—

Kind	Amount
Cattle	$ 361.75
Swine	10,571.74
Total	$10,933.49

2. Sale of Produce Raised—

Grain	$28,912.99
Eggs	49.35
Total	$28,962.34

3. Other Farm Income—

Items	Amount
Patronage dividends, rebates, or refunds, if not reported elsewhere in return	$ 611.55
Total	$ 611.55

4. Sale of Livestock and Other Items Purchased—

1. Description: M. I. Hay Loader and Dump
3. Gross sales price (contract price) ..... $ 145.00
4. Cost or other bases ..... $ 218.06
5. Depreciation allowed (or allowable) since acquisition on March 1, 1913 ..... $ 38.62
6. Profit (column 3 plus column 5 minus column 4) ..... $ —

Total (enter on line 4 of summary below) ..... Loss $—(34.44)

Summary Of Income And Deductions On A Cash Receipts and Disbursements Basis—	
1. Sale of livestock raised	$10,933.49
2. Sale of produce raised	28,962.34
3. Other farm income	611.55
4. Profit on sale of livestock and other items purchased	—34.44
5. Gross Profits	$40,472.94
6. Expenses (from page 3)	$37,588.46
7. Depreciation (from page 3)	12,838.90
9. Total Deductions	$50,427.36
10. Net farm profit (line 5 minus line 9) to be reported in Schedule C, page 2, Form 1040 Loss	$ 9,954.42

1. Items	2. Amount
Labor hired	$ 9,148.28
Feed purchased	3,274.70
Seed and plants purchased	2,293.73
Supplies purchased	213.70
Cost of repairs and maintenance	2,783.77
Fertilizers and lime, fumigating & Spraying	2,525.79
Veterinary and medicine for livestock	76.50
Gasoline, other fuel and oil for farm business	5,194.65
Taxes	2,048.46
Insurance on property (except your dwelling)	800.08
Interest on farm notes and mortgages	3,964.86
Water rent, electricity, and telephone	1,314.59
Rent of farm, part of farm, or pasturage	982.93

3. Items (Continued)	4. Amount (Continued)
Other farm expenses (specify):	
Professional fees	$ 1,509.00

Oil and Spraying		519.14
Tubes and tires for tractor		38.32
Farm Bureau dues		15.00
Plywood		10.77
Batteries		29.00
Alcohol		22.14
Paint		88.00
Magneto for tractor		32.00
Twine and parts		269.99
Hog Vitamine		153.75
Hauling cattle—pasture		60.00
Boarding		31.00
Misc.		120.00
Coal		66.27
Bank Charge		2.04
Total of Columns 2 and 4 (enter on line 6 of summary on page 1 (cash basis) or line 7, page 2 (accruel basis))		$37,588.46
Total (enter on line 7 of summary on page 1 (cash basis) or line 8, page 2 (accrual basis))		$12838.90

Exhibit A.

Paul De Lucia
812 Lathrop Ave.
River Forest, Ill.

Addenda, Form 1040F, Year 1950—

Income from Sale Of Grain:		
Corn	$16,558.85	
Wheat	9,149.48	
Soy Beans	3,204.66	$28,912.99
Farm Expenses:		
Interest Paid, Forest Park National Bank	$ 357.50	
Prudential Ins. Co. Mtg. Loan	3,240.00	
Contl. Ill. Natl. Bk. Notes on Tractor	215.64	
Yorkville Natl. Bank	151.72	$ 3,964.86

EXHIBIT "B"

FORM 1040 F, YEAR 1950.

PAUL & NANCY DE LUCIA
813 Lathrop
River Forest, Ill.

DEPRECIATION SCHEDULE:
PROPERTY
IMPROVEMENTS:

	Rate	Cost	Dep. Res. 1/1/50	1950 Deprec.	Dep. Res. 1/1/51
main house		$20,273.91			
East Farm	6 2/3%	10,987.02	$5,252.97	$721.32	$5,974.29
Cottage Across Main Hse.	6 2/3	1,500.00	784.33	100.00	884.33
Dairy Farm Bldgs.	5	9,500.00	3,720.84	475.00	4,195.84
" " " (Well)	4	951.00	38.04		38.04
West Set Of Bldgs.	10	4.225.55	2,976.34	380.00	3,356.34
Capital Improvements	5	14,870.00	4,628.85	743.50	5,372.35
New House (Architect)		450.00			
Buildings—Tool Shed	6 2/3	696.33	60.90	34.80	95.70
Silos	5	2,956.60	174.48	147.83	322.31
Barn	4	81,517.25	3,135.07	3,260.69	6,395.76
Cow Barn	4	17,578.40	260.15	686.70	946.85
Wells	5	15,498.69		684.86	684.86
Water Reservoir	4	3,608.73	144.35	144.35	288.70
Fish Pool		2,220.00			
Tractor, Wagon, Implements		46,651.71	2,003.24	4,823.71	6,826.95
Machinery & Equip. (Curry)	10	5,617.83	1,177.87	561.78	1,739.65
Tile On Field	10	1,487.22		74.36	74.36
Road		2,880.16			
Cadillac Coupe De Ville		4,028.00			
			$24,357.43	12,838.80	$37,196.33

By Mr. Green: The same objection may be noted on behalf of the defendant Bulger.

By The Court: The same ruling.

441 By Mr. Barnett: It is further agreed—this is Stipulation No. 3—it is further agreed that Paul De-Lucia paid no Federal income taxes during the period 1920 through 1934 inclusive;

That Government Exhibit No. 4 is a United States Treasury Form, No. 899, which is a true and correct copy of the assessment of income taxes due and payments or credits made in re Paul DeLucia for the period 1920 to 1950, inclusive, as reflected by the assessment roles of the District Director of Internal Revenue for the First District of Illinois.

Your Honor, I inadvertently offered Exhibit No. 24 before I had read the stipulation with respect to it. I assume that it may be admitted.

By The Court: It may be received.

(Said document, so offered and received in evidence, was marked Government Exhibit 24.)

By Mr. Barnett: Your Honor, if I may, I would like to read parts of these income tax returns to the jury.

By The Court: You may.

By Mr. Barnett: Exhibit No. 8, ladies and gentle-
442 men, is the income tax return for the calendar year 1935.

Name of the taxpayer: Paul DeLucia; Address: 5300 Jackson Boulevard, Chicago, Illinois.

On Line 1 of the return, under the caption "Income", the following appears: —this is printed on the form—

"1. Salaries, wages, commissions, fees, et cetera (State name and address of employer)."

Typewritten is the figure on that line which reads as follows:

"$12,000."

Several lines beneath that, which I will not read, I come down to Line 10, which reads, the printed portion:

"Dividends on stock of, a, domestic corporations subject to taxation under Title 1 of the 1934 Act,"

and then typewritten:

"$1,250."

On Line 12, which reads in print as follows:

"Total income in Items 1 to 11,"

443 and typewritten on the form is:

"$13,260."

This return is signed "Paul DeLucia," and notarized on the 10th day of March, 1936.

Under the general caption of "Computation of Tax," it shows "Personal Exemption, $2,500, Credit for Dependents, $800.",

444 Exhibit No. 9 is the income tax return for the calendar year 1936. The name Paul DeLucia, 5300 Jackson Boulevard.

On Line 1 of the return under the caption "Salaries, wages, commissions, fees, et cetera" is the typewritten amount $22,000.00.

On line 6, under the caption "Dividends" is the typewritten amount "$2,000.00."

On line 12, total income is $24,000.00.

Personal exemptions claimed on the return are in the amount of $2,500.00. The return is signed Paul DeLucia and notarized on the 9th day of March, 1937.

Exhibit No. 10 is the 1937 income tax return of Paul DeLucia, address, 5300 Jackson Boulevard.

On line 1 there is a little different reading now. The printed form says "Salaries and other compensation for personal services (From Schedule A)".

The amount typed in on line 1 is $1,800.00.

Line 2, dividends from domestic and foreign corporations, typed in is $1,716.63.

Line 11, "Other Income; state nature; use separate
445 schedule if necessary." The amount typed in is $39,400.00.

Line 12, total income, $42,916.63. Personal exemptions claimed on the return are in the amount of $2,500.00. The $39,400.00 is not broken down on the separate schedule on the return.

Exhibit No. 11 is the income tax return of Paul DeLucia for the calendar year 193[illegible], and reads, Paul DeLucia, ad-

dress, 812 North Lathrop Avenue, River Forest, Cook County, Illinois.

Line 1 of the return reads as follows: "Salaries and other compensation for personal services from Schedule A," and then there is written in, in longhand "Miscellaneous Income" and following thereafter are the written-in figures in longhand $58,750.00.

Line 2, dividends, the amount written in is $997.00.

Line 12, total income, the amount written in is $59,747.00. The personal exemptions claimed on the return are in the amount of $2,500.00.

Schedule A on page 2 of the return breaks down the income as follows: World Playhouse Amusement Company, 401 South Michigan Avenue, Chicago, $1,800.00.

446 Written in in longhand, as was also World Playhouse, is Miscellaneous Income, $56,950.00. Total income from Schedule A, $58,750.

447 Exhibit No. 12, the return for the year 1939, "Paul DeLucia, 812 Lathrop Avenue," and on Line 1, "Salaries and Other Compensation for Personal Services," written in, in longhand,

"$74,058.17."

Under Line 10(b), "Net Long Term Capital Gain,"

"$3,448.86."

Line 12, "Total Income,"

"$70,609.31."

"Personal Exemptions" claimed on the face of the return:

"$2,500."

"Schedule A," on page 2 of the return, breaks down the income as follows, and this is printed in, in longhand:

"World Playhouse Amusement Corporation, 410 South Michigan Avenue, $1,000.

"Miscellaneous, $73,058.17."

The return is signed, "Paul DeLucia" and notarized on the 11th day of March, 1940.

On the first page of the return, under Line 10(b), I read to you as the net long term gain the figure of
448 $3,448.86. That should be a Net Long Term Loss of $3,448.86. The red figures don't show up on the photostat.

Government Exhibit No. 13 is the 1940 original return of Paul DeLucia, address, 812 Lathrop Avenue, River Forest, Illinois.

On the face of the return, Line 1, "Salaries and Other Compensation for Personal Services: $400;"

"Dividends: $225."

Line 11, printed on the form, says, "Other Income including income from annuities," and then written in is the word "Miscellaneous," and the amount, "$60,139.78."

Total income shown on the return is "$60,657."

Personal exemption claimed on the return in the amount of $2000. That would be the exemption for husband and wife.

The return is executed, "Paul DeLucia," notarized on the 14th day of February, 1941.

Government Exhibit No. 14 is the return for the calendar year 1941, and reads, "Paul DeLucia, 812 Lathrop Avenue, River Forest, Illinois."

449 Line 1, "Salaries and Other Compensation for Personal Services," written in is the amount "$800."

Line 2, "Dividends from World Playhouse," total figure of "$647.82."

Line 9, the printed material reads, "Income or Loss from Partnerships, Fiduciary Income and Other Income," and then there is written in the word "Miscellaneous" and the amount "$70,738.98."

There is an "Interest" item, a deduction of "$45.47."

The net income shown on the face of the return is "$72,141.32."

The return is executed by "Paul DeLucia" and notarized on the 12th day of March, 1942.

On the reverse side of the return, under "Personal Exemptions," it says, "Married and living with husband or wife," and the credit claimed is $1500.

450 Government Exhibit No. 15 is the return for the year 1942 and reads Paul DeLucia, 812 Lathrop Avenue, River Forest.

It shows on line 9 a net profit or loss from business or profession, the word "loss" is written in, and the amount is $1,476.92.

On Line 10, income from partnerships, fiduciary income and other income, and written in is the word "Miscellaneous" and the amount written in is $72,503.52.

There is a loss claimed for taxes—not a loss, but deduction for tax paid of $1,946.89.

Net income on the face of the return is $69,079.71.

The personal exemption claimed on the face of the return is in the amount of $1200.00.

Executed by Paul DeLucia on date of March 12, 1943.

On page 2 under the heading Personal Exemptions reads "Married and living with husband or wife twelve months during this year," credit claimed is $1200.00.

Government Exhibit No. 16 is a return for the year 1943, Paul DeLucia, 812 Lathrop Avenue, River For-
451 est, Illinois.

Line 8 shows a loss from business or profession of $675.00. Line 9 shows income or loss from partnership, fiduciary income, et cetera, and the amount shown is $80,375.00. The total income is $79,700.00.

That income is not further broken down on the return. The return is executed by Paul DeLucia under date of March 14, 1949, and above the signature appears the typewritten statement:

> "I declare under the penalties of perjury that this return, including any accompanying schedules on statements, has been examined by me, and to the best of my knowledge and belief is true and correct."

And typed in are the words "To the best of my ability from data available." Signed Paul DeLucia, March 14, 1944.

On page 2, the personal exemption states "Married and living with husband or wife twelve months of this year," and credit claimed is $1200.00.

452 Exhibit 17-A is a tentative return for 1945 in the name of "Paul DeLucia," and shows estimated income of $4,000 and estimated tax of $318.

The final return for the year 1945 is Government Exhibit No. 17-B. That shows "Paul DeLucia, 812 Lathrop Avenue," and it shows under the caption of Line 4, "If you received any other income, give details on Page 2," and income listed is "$348.28."

That is shown on Page 2 to result from as follows:

"Income from Rents and Royalties," and typed in "Farm, $7,700," as the amount of rents or royalties.

Expenses of the farm, "$8,351.72," or a net loss on farm operations of "$651.72."

Under "Schedule E," "Income from Other Sources $1,000," leaving a net income after deducting the $651. loss, a net income of $348.28.

This return was executed by "Paul DeLucia" under date of March 14, 1946, executed "Paul DeLucia by Nancy DeLucia," and the preparer of the return is "Eugene

453 Bernstein."

Government Exhibit No. 18 is the return for the year 1946. It reads, "Paul DeLucia, 812 Lathrop Avenue," and shows "Interest Income, $143; Other Income, $5,000."

Other income is shown to be from farm operations on Page 2 of the return.

Income from Rent or Royalty of farm is $10,338.76.

Expenses, $5,338.76, leaving a net income of $5,000 from the operation of the farm.

Under the "Personal Exemptions" claimed are "Nancy DeLucia, wife; Paul, son; Anthony, son; and Mary, daughter."

The return is executed "Paul DeLucia by Nancy DeLucia," and the signature of the preparer of the return is "Eugene Bernstein."

The filing date shows "March 15, 1947."

454 Exhibit 19, return for the year 1947 of Paul DeLucia, 812 Lathrop Avenue, River Forest, Illinois, shows the dependents claim are Paul DeLucia, Nancy, his wife, Paul DeLucia, Jr. and Anthony, sons, and Mary, daughter.

It shows income from dividends, $100.00; interest, $287.50, and other income, $6,262.97, which is shown to be from the operation of the farm which had total royalties exceeding $12,000.00 and expenses exceeding $6,300.00, leaving a net of $6,262.97.

The return is executed by Paul DeLucia under date of March 7, 1948, and is prepared by Eugene Bernstein on the date it was submitted for signature, but dated March 7, 1948, also.

Government's Exhibit No. 20 is the return for 1948 and that is made in the name of Paul and Nancy. The address on this return shows 814 North Lathrop Avenue, River Forest, Illinois, and the income shown on the face of the return from dividends is $273.71 and line 5 reads:

"If you received any other income, give details on page 2 and enter total here."

There is a minus figure of $19,218.42. The minus
455 figure is shown on page 2 of the return. It is the results from the farm operations and, attached to that is a schedule of farm expenses which I will not read to you.

The return is executed "Paul DeLucia and Nancy DeLucia," and is prepared by Eugene Bernstein, filed in the Collector of Internal Revenue's office, by the Collector's receipt, dated on March 9, 1949.

456 Exhibit No. 21 is the 1949 return, which reads: "Paul DeLucia and Nancy DeLucia, 812 North Lathrop Avenue, River Forest, Illinois."

Line 3 shows Dividends Income of $120, Interest Income of $3.25, and Other Income—a red figure, a loss of $2,282.95, which, on Page 2 of the return is shown the result of farm operations.

The return was signed by "Paul DeLucia" on January 30, 1950, and "Nancy DeLucia," on the same date.

It was prepared by "Eugene Bernstein."

The date of the Collector's receipt of it, by the stamp, is illegible, although it shows "Accepted."

Government Exhibit No. 22 is a 1950 return and it reads, "Paul DeLucia and Nancy DeLucia, 812 North Lathrop Avenue, River Forest, Illinois."

On the face of the return it shows a loss of $9,838.82.

Page 2 of the return shows that the loss results from farm operations.

The return is executed by "Paul DeLucia and Nancy DeLucia" and prepared by "Eugene Bernstein" and
457 filed with the Collector of Internal Revenue in the First District of Illinois on March 5, 1951.

This return shows no tax due.

Government Exhibit No. 21, the return for the calendar year 1949, shows no tax due.

Government Exhibit No. 20, the return for the calendar year 1948, shows no tax due.

So concludes the stipulations and the reading of the returns now, your Honor.

* * *

459 WILLIAM M. RUGGABER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Barnett:

Q. Will you state your full name, please?

A. William M. Ruggaber, R-u-g-g-a-b-e-r.

Q. Where do you live, Mr. Ruggaber?

A. I live in Deerfield, Illinois.

Q. What is your occupation?

A. I am technical advisor in the Office of the Regional Counsel of the Internal Revenue Service at Chicago, Illinois.

Q. How long have you been in that position?

A. In that particular position, since January of 1946.

Q. How long have you been employed by the Internal Revenue Service?

A. Since September 8, 1923.

Q. Between 1923 and 1946, what was your position with the Internal Revenue Service?

A. I was originally a deputy collector and later a revenue agent.

Q. And during the years 1941 to and including
460 1946, what was your position?

A. I was an Internal Revenue Agent, in Chicago, Illinois.

Q. And you were assigned to the Chicago office?

A. Yes, sir.

Q. At any time, were you assigned to investigate the income tax liability of Mr. Paul DeLucia?

A. I was.

Q. Approximately when was that?

A. I was given a group of cases which included the returns of Mr. DeLucia, beginning in May of 1941.

Q. You investigated Mr. DeLucia's income tax liability as well as certain others, is that correct?

A. Yes, sir.

Q. Were these others associated with him in some enterprise?

A. Yes, sir.

Q. How long did that investigation go on?

A. Well, I continued it through 1944.

Q. And at the conclusion of the investigation, did you prepare a report with respect to Mr. DeLucia's income tax liability?

461 A. I did.

Q. Approximately when was that written?

A. About December 12th, 1944.

Q. I hand you what has been marked Government's Exhibit No. 55 for identification and ask you if that is the report which you prepared?

A. This is a typewritten copy of the report I prepared.

Q. The report that you prepared initially was prepared how?

A. Well, partially in longhand and partially by typewriter.

Q. Did you type the typewritten portions yourself?

A. Yes, sir.

Q. That became a finished draft then that was partially typed and partially handwritten?

A. Yes, sir.

Q. This document that you have before you now, is that a true and correct duplication of the original report as prepared by you?

A. It is.

Q. What years are covered with respect to the income that is treated in this report, Mr. Ruggaber?

462 A. This report covers the years 1935 through 1941, inclusive.

Q. Now, Mr. Ruggaber, will you refer, please, to the back of the report?

Do you find there a photostatic copy of the schedule?

A. Yes, sir, I do.

463 Q. Do you know where the original of that schedule is?

A. Well, the original was attached to my work copy.

Q. How was the original prepared, in longhand or on the typewriter?

A. The original was prepared in longhand.

Q. And who prepared it?

A. I did.

Q. After that was prepared, did you cause it to be typed?

A. I did.

Q. Is this photostat which you have before you a true and correct copy of the typed schedule?

A. It is.

Q. And in that schedule are the results of your investigation shown?

A. They are.

Q. Will you tell us with respect to the investigation, particularly of Mr. DeLucia and any of his associates, what the nature of your investigation was?

A. Well, the nature of the investigation, or, rather, 464 this report, let us say, is based on the information gained out of the testimony of the various files that were held in Federal Court in the Lower Southern District in New York City, of Willie Bioff and George Brown, Joseph Schenck, another trial, and a third trial of various people involving—three of them included on this schedule.

Q. Involving what? I didn't hear you. I don't know what you said. I don't know what you said, Mr. Ruggaber.

By The Court: Involving three of them included on this schedule.

By Mr. Barnett:

Q. And those three are whom?

A. Nitti, DeLucia, Campagna.

Q. What was the nature of those trials that you were talking about? Were they the movie extortion trials?

A. They were.

Q. Did your investigation include any other activities?

A. Yes. There were some items gotten through
465 independent examination, investigation, which were not testified to in the trials.

Q. I see.

Now, what does this schedule that you have the photostatic copy of before you—what does that schedule show with respect to this investigation?

By Mr. Stewart: Your Honor, I am going to object. If the schedule is admissible, we can look at that and tell what it shows and I might say here, prior to the trial, we asked that certain things be furnished us. So far as I am informed, this hadn't been furnished us.

By Mr. Barnett: It hasn't, but I will certainly make it available to you.

466 By Mr. Stewart: I think it should be available before the witness continues any further. We are taken by surprise by this.

By Mr. Barnett: I don't see that, your Honor. I have this witness on direct examination, and I can provide him with a copy of it, but I don't see that it is necessary.

By Mr. Stewart: That should have been done when we were in here.

By Mr. Barnett: I don't think you had any right to it at all, Mr. Stewart, until this witness took the stand.

By The Court: As a matter of fact, didn't you cover it in your opening statement before the jury?

By Mr. Stewart: Not this report. All I am asking now, and it looks like Mr. Barnett is agreeable, is that we would like a copy. Your Honor can arrange that however it is convenient. If he can go ahead and use the
467 time of the Court without us getting to the cross examination, maybe we can have it over the lunch period.

By The Court: That is all right. I will require him to give you a copy of that report.

By Mr. Stewart: I doubt if the prosecutor should be allowed to have the witness read from it because it is either admissible or it isn't.

By Mr. Barnett: I haven't had him read from it.

By The Court: I will rule upon it. You make your objection and I will rule upon it as we go along here.

By Mr. Barnett:

Q. Mr. Ruggaber, what is the nature of the information which is included on the photostatic Schedule A attached to your report?

A. The nature of the schedule is, it shows the dates and types of payments and total amount of various of these extortion payments testified to at the trial and then—

Q. Does it list the name of the person?

468 A. It lists the name of the source and the amount. Then there is a distribution which is divided five ways. The first name is Brown, George Brown. Next is Willie Bioff. Each of those are shown as receiving one-sixth—

By Mr. Stewart: Your Honor, will you take that away from him? He is reading it. I mean, we are entitled to have the record show he is reading from his report.

By The Court: If he has exhausted his recollection, he may refresh it from his own notes.

By Mr. Stewart: First he must do that. He has not done that.

By The Court: That is right. I was merely telling Mr. Barnett.

By Mr. Barnett: He was merely reading the captions. If Mr. Stewart objects, I am sure he will continue and tell us without the report.

By Mr. Barnett:

Q. Go ahead, Mr. Ruggaber.

A. The next three columns show the names of Nit-
469 to, DeLucia and Campagna, and each shows a two-ninths distribution of the original total amount.

Q. In other words, Mr. Ruggaber, then, the nature of that document is to show the proceeds of the extortion money and its distribution to the various persons, is that correct?

A. That is correct.

Q. Did you use the figures that are shown on that schedule in your computation of income and tax for the years 1935 to 1941 as reflected in your report?

A. I did.

470 Q. Mr. Ruggaber, you examined the year 1935, did you not?

A. I did.

Q. I will hand you Government Exhibit No. 8, which is the 1935 return.

Did you or did you not attribute any additional income to the taxpayer DeLucia with respect to the calendar year 1935 in your report?

A. I did.

Q. What was the amount of the additional income which you attributed to him?

A. I cannot tell you that amount without referring to my report.

Q. All right.

Mr. Ruggaber, will you refer to your report, please, and refresh your recollection?

A. I attributed as Mr. DeLucia's distributive share for the year 1935 of these sums, two-ninths, or a total of $44,757.06.

Q. $44,000-what?

A. $44,757.06.

By Mr. Stewart: May I interrupt here? I would like to make that as a sort of a test for my objection, your
471 Honor.

May I ask a few questions, or may I just state to the Court that all of this resulted in a settlement, and that was approved by the Tax Court?

By The Court: I don't recall whether that was in the stipulation or—

By Mr. Stewart: I did that out of the presence of the jury.

By The Court: —or whether it was referred to in your opening statement?

By Mr. Stewart: Before the jury was allowed to hear any of the evidence, you remember, we made a showing with Mr. Bernstein.

By The Court: That is right.

By Mr. Stewart: I made the point—I believe your Honor ruled against me—but now it comes in the evidence, and I would like to have the record show that we object to going into the details of something that has been settled.

By The Court: The objection will be overruled.

472 As I understood then and as I understand now, it is merely a tracing of the funds leading up to the years in question.

By Mr. Barnett: Exactly, your Honor, and this $44,000, for instance, that Mr. Ruggaber has attributed is eventually treated as being sums of money available to the taxpayer in these years.

By The Court: Yes.

All right, go ahead.

By Mr. Barnett:

Q. Mr. Ruggaber, the portion which you distributed to Mr. DeLucia was $44,000, which was two-ninths of what total figure?

A. $206,406.79.

Q. And that represented the total amount involved for the year 1935, is that correct?

A. That is correct.

Q. Referring to the 1935 return, Mr. Ruggaber, if I recall correctly, there is a figure of $12,000 shown on Line 1, is that correct?

A. That is correct.

Q. Did you give Mr. DeLucia any credit against
473 the extortion proceeds for the sum reported on that return of $12,000?

A. I did not.

Q. For what reason?

A. I did not against this $44,000—is that your question?

Q. Yes.

A. I did not give him any credit against the $44,000. I gave him credit for having reported it for the reason that it was on Line 1. That is the line calling for "Salaries, Wages, Commissions, Fees, and so forth."

Q. All right.

I will hand you Government Exhibit No. 9, which is the 1936 income tax return of Mr. DeLucia, and I ask you, Mr. Ruggaber, first of all, will you please refer to the return and tell us what income is reported on the face of it, the first figure?

A. On Line 1, "Salaries, Wages, et cetera," $22,000. Line 6, "Dividends"—

Q. All right. That is enough.

474 A. (Continuing) —total of $24,000 has been reported, net income.

475 Q. All right. Now in your examination, as a result of your examination, did you attribute additional income to Mr. DeLucia for the calendar year 1936?

A. I did.

Q. From what source did you obtain the information concerning the income which you charged to him for that year?

A. From the same source of extortion schedule.

Q. What was the total extortion money that was paid to this group during the year 1936?

A. $377,458—no cents.

Q. What portion of that did you attribute to Mr. DeLucia?

A. Two-ninths.

Q. What is that figure?

A. Or $83,899.61.

Q. In your report, did you charge them with that full sum?

A. I did.

Q. I hand you now, Mr. Ruggaber, Government's Exhibit No. 10, which is the income tax return of Mr.
476 DeLucia for the year 1937. Will you refer to the face of the return, Mr. Ruggaber, please?

A. Yes, sir.

Q. On line 11, do you find an item captioned "Other Income"?

A. Yes, sir, I do.

Q. How does that read?

A. Other income, state nature, use separate schedule if necessary, $39,400.00.

Q. Even?

A. Even, right.

Q. Now with respect to the calendar year 1937 as a result of your investigation, did you in your report attribute additional income to Mr. DeLucia?

A. I did.

Q. From what source was that income?

A. From the same movie producers and exhibitors extortion money.

Q. What was the total sum available in the year 1937 for all the persons involved?

A. The total funds from this source amounted to $560,010—no cents.

Q. What portion of that did you charge Mr. DeLucia had received?

A. Two-ninths or a total of $124,446.71.

477 Q. How much additional income did you attribute to Mr. DeLucia on your report for the year 1937?

A. From the $124,000.00 in my allocation, I subtracted $39,400.00 shown on the return as other income, and I charged him with an additional income of $85,046.71.

Q. You gave him credit then for having reported $39,400.00 of the total received of $124,446.00, is that correct?

A. That is correct.

Q. Because it was reported on his return?

A. Yes.

Q. I hand you Government Exhibit 11, Mr. Ruggaber, which is the return for the year 1938, and ask you to refer to line 1 on that return.

A. Yes, sir.

Q. Will you read it to us, please?

A. I have it.

Q. What is it?

A. The amount shown on there under salaries and other compensation for personal service, and written in longhand is "Miscellaneous Income, $58,750.00." It says from Schedule A—I believe that is what it is. Yes, from Schedule A. Schedule A is on page 2, and it shows

478 $1,800.00 having been received from World Playhouse Amusement Company and miscellaneous, $56,950.00, which makes this total of $58,750.00 shown on page 1.

479 Q. Now, Mr. Ruggaber, what does your schedule show was the total extortion funds available to the entire group for the calendar year 1938?

A. $332,225, and no cents.

Q. Did you distribute two-ninths of that to Mr. DeLucia?

A. Yes, sir.

Q. What was the two-ninths' figure?

A. $73,827.80.

Q. Did you give Mr. DeLucia credit for having reported the $58,000 miscellaneous income shown on his return?

A. I gave him credit for having reported $56,950 plus an additional sum set up by a Revenue agent in the prior examination as "Miscellaneous income." I gave him a total miscellaneous income reported of $59,749.72.

Q. What is the amount of miscellaneous on Page 2 of the return?

A. $56,950.

Q. And you gave him credit for the additional sum because a previous Revenue agent had audited him 480 and increased the amount at that time?

A. Yes, sir.

Q. So what was the total amount of additional income which you charged him with having received for the calendar year 1938?

A. $14,078.08.

Q. Mr. Ruggaber, I hand you Government Exhibit No. 12, which is the 1939 return of Paul DeLucia, and ask you to refer to Page 2 of the return, Mr. Ruggaber, Schedule A.

Do you find Schedule A?

A. Yes, sir.

Q. Will you read to us what is shown there?

A. "World Playhouse Amusement Corporation, $1,000. Miscellaneous, $73,058.17, for a total of $74,058.17."

Q. With respect to your examination, what was the total amount of extortion funds which you found available to the group for the calendar year 1939?

A. $189,233.59.

Q. Did you consider that Paul DeLucia had received two-ninths thereof?

481 A. I did.

Q. What was that figure?

A. $42,051.93.

Q. How did you treat that in your report?

A. I did not make a change for the year 1939.

Q. For what reason?

A. For the reason that miscellaneous income reported exceeded the amount of distributive share shown by my schedules.

Q. Mr. Ruggaber, I hand you Government Exhibit No. 13, which is the 1940 return of Paul DeLucia, and ask you to refer to Line 11 and read what appears thereon.

A. Line 11, is "Other income," and written in long-hand, behind the printed words: "State nature" is the word "Miscellaneous," and the amount "$60,139.78."

482 Q. Does the information cover the year 1940?

A. Yes, sir, it did.

Q. What was the total of the extortion funds that you found to be available to this group for that year?

A. $161,599.52.

Q. Did you consider that Mr. DeLucia had received two-ninths thereof?

A. I did.

Q. And what was that figure?

A. And how did you handle that in your report?

A. I did not make a change for that purpose in that year.

Q. For what reason?

A. For the reason that the amount of miscellaneous income reported exceeded the distributive share shown by my schedule.

Q. For the calendar year 1941, was it included in your examination, Mr. Ruggaber?

A. I believe it is, yes, sir.

Q. Is there any change?

A. A technical change only. That is on the earned
483 income credit.

Q. Does your schedule of extortion funds include the year 1940?

A. No, sir, it does not.

Q. It does not?

A. No, sir.

Q. Mr. Ruggaber, do you have the figure of the total extortion funds available for the period 1935 to 1940, inclusive? Do you have that total or not?

A. I have it, not for the exact dollars, but I have $1,827,000—I believe, one million eight hundred and twenty-seven thousand, I believe it is.

Q. I see.

A. Further than that, I can't break it down.

Q. And of that total, what portion did you consider as attributable to Mr. DeLucia?

A. It was four hundred and four thousand dollars, plus.

Q. And as the result of your examination, what is the total amount of additional income for the years 1935, 1936 and 1937 that you charge to him?

A. Two hundred—

Q. Do you have it in your report there?

484 A. I haven't got a total. I could total it, your Honor. Two hundred and twenty-seven, I believe. I have it two hundred and twenty-seven plus—thousand.

Q. Two hundred and twenty-seven thousand?

A. Yes, sir, out of the four hundred and four thousand.

Q. And you considered the balance thereof to be reported on his returns, did you?

A. Yes, sir, I did.

Q. At the conclusion of your investigation and after you had written your report, what did you do with your report?

A. I submitted it to my superior, the Revenue Agent in Charge.

Q. And in so far as you were concerned, did that conclude your investigation of this matter?

A. That did.

Q. I did not hear you, sir.

A. That did.

485 By Mr. Barnett: Your Honor, if counsel desires me to, I will offer these Government Exhibits 55, with the attached schedules, in evidence.

By The Court: I will reserve my ruling. I will give you a chance to look through them and make your observations.

By Mr. Barnett: Take the whole thing.

By Mr. Stewart: I will just take this over the noon recess and look through.

By Mr. Barnett: I am through with this witness, now, your Honor.

By Mr. Stewart: I can cross examine for a while now, your Honor, without this (indicating).

By The Court: All right.

By Mr. Green: Before Mr. Stewart proceeds, I would like to make, for the record, a motion to strike the whole of Mr. Ruggaber's testimony so far as Mr. Bulger.

By The Court: The jury understands the nature of the objection. It doesn't apply to Mr. Bulger. I am
486 reserving my ruling until some future time to see whether they do or do not connect it up.

Is that clear?

So, it will be the same ruling.

By Mr. Green: Thank you, your Honor.

Cross Examination.

By Mr. Stewart:

Q. Mr. Ruggaber, you know that your work on that case concerning the movie money, that resulted in a settlement later on? You know that, don't you?

A. I have heard about it, yes, sir.

Q. And that settlement was approved by the Tax Court and certain moneys were paid in to the Government?

A. Yes, sir.

Q. Let me ask you: Are you a lawyer?

A. No, sir.

Q. Did you ever study law?

A. Commercial law; not criminal law.

Q. Did you ever talk to Mr. Bioff?

A. Mr. Bioff? No, sir.

Q. Did you ever talk to Mr. Brown?

487 A. Yes, sir.

Q. Were you present at the trial in New York?

A. I was not.

Q. How long after the trial was conducted did you first take a look at the transcript that was made there?

A. As soon as it was available.

Q. When was that?

A. I don't know. It was sometime prior to my writing my report, which is dated in 1944.

Q. And sometime after the trial was held?

A. Yes, sir.

Q. The reason I asked you if you were a lawyer, and you would probably understand what I mean—your information that you got from that transcript, was second-hand, it was hearsay, wasn't it? That is, you didn't have the facts before you; you had a record of the trial?

By Mr. Barnett: I object to that, your Honor. I think he is arguing this matter now.

As a matter of fact, the witness testified as to what 488 he did and the sources of his information.

By The Court: I will let him answer. It stands for itself. He got them out of the transcripts.

By The Witness: May I have your question again, please, sir?

489 By Mr. Stewart:

Q. Well, what you got was second-hand information and that is, it was what another man said in the court room?

A. For the most part, yes, sir.

Q. And whether that man was telling the truth or not, of course you didn't know, did you?

A. No, sir.

Q. And you didn't undertake to pass upon Mr. Bioff's credibility, did you?

A. No, sir.

Q. As you were making that examination, did you read through the entire record that was made there in New York.

A. There were several of us were briefing this thing. Several trials were briefed and, when we had important pages, we would go back and read that testimony.

There was a lot of testimony that didn't affect us, dollars and cents and numberwise and I wouldn't read that, but, where there was any page that specified any money and how it was paid and by whom and how it was collected, that type would be reread.

490 Q. So that as you sit there now and look back on it, you never read the whole record yourself, did you?

A. No, sir.

Q. And you and the other agents divided up the work and you read the part that you thought would help you find out something about figures?

A. Tried to get the facts on our particular individuals.

Q. Now, you didn't read any testimony given by Paul DeLucia, did you, at any time in that trial?

A. There was none given, sir, to my knowledge.

Q. And you didn't see any, did you?

A. I did not see any.

Q. You know, in a general way, that the charge there was conspiracy?

A. Yes, sir.

Q. Do you know enough about the law to know that a conspiracy can be committed with the persons to the thing that they are talking about or whether they just agree to it? Do you know that?

A. I wouldn't care to answer that question. That is a legal question, sir.

Q. Well, you did undertake to make some decisions
491 as you went over the testimony, didn't you?

A. Yes, sir.

Q. And in making those decisions, am I correct in saying that you just took Bioff's testimony so far as it related to figures, you took that as true, didn't you?

A. I took very little of Bioff's testimony, in my opinion. I took the testimony of the various people who paid this money.

Q. Who were—oh, the people who paid the money?

A. Yes, sir.

Q. Well, who did they pay it to?

A. To various people.

Q. And it was Bioff, wasn't it, they paid it to?

A. Sometimes, and sometimes others.

Q. Did you find any testimony that any one of those people said they gave Paul DeLucia one cent?

A. No, sir.

Q. As a matter of fact, you read enough of that record to know that Bioff was the man who said that he got the money from the people who owned the money in the first
place and then took it and distributed it, isn't that
492 right?

A. Bioff got a part of it. There were other people. Brown got a part of it. Nick Dean or Circella got part of it. There were other individuals.

Q. Now, the ony source of your information as to whom that money was delivered to that was obtained from the movie picture people—the only information you were to find in the record came from Bioff, didn't it?

A. Oh, no, sir.

Q. Who else did it come from?

A. Other people who testified.

Q. Who are they?

A. Brown.

Q. Yes, you said Brown.

A. And the payees.

Q. Who are the payees?

A. I can't name them offhand from memory.

493 Q. You mean those are the people that paid the money?

A. Yes, sir.

Q. Well, they didn't say that they dealt with, at any time here, Mr. DeLucia, did they?

A. No, sir.

Q. What is that?

A. They did not say they talked to DeLucia direct or handed money to him direct.

Q. And when you wanted to figure out, you were trying to figure out from the standpoint of the Government seeking taxes, isn't that right?

A. I was figuring out from the standpoint of protecting the revenue.

Q. That is right.

Now, you relied on Bioff's having told the truth about having received that money and taking part of it, didn't you?

A. I believe I have stated several times that I did not rely on Bioff alone.

Q. And you took what Bioff said, that he took a certain percentage of the money to keep for himself, didn't you?

494 A. In some instances he did.

Q. Now, whether that is true or not, you had to rely on Bioff, isn't that right?

A. I had to rely on the trial testimony of various people; not Bioff alone.

Q. Well, tell me, who are the others that you rely on?

A. I told you, principally one was Brown, and various other people.

Q. Now, Bioff and Brown, they were originally named as defendants, weren't they?

A. In a separate trial, yes, sir.

Q. And when they did testify, they did what they call "turning evidence for the Government," isn't that right?

A. I believe that is the term you use.

Q. So, they were defendants who took the stand at the trial and said something to indicate that they were guilty and they told what transactions they had with the other defendants, isn't that right?

A. That is correct.

Q. Now, when Bioff and Brown testified that they
495 themselves got this money and took a certain percentage of it to put in their own pockets, you deducted that sum, didn't you?

A. That they retained? Yes, sir.

Q. Yes.

A. Yes, sir.

Q. And you took their word for it that that was the amount that they kept?

A. I took the trial testimony in which their conviction was obtained.

Q. Well, we have been over that before.

Have you named anybody else besides Bioff and Brown?

A. I can't from memory.

Q. Well, it is rather important to us, now.

Is there anybody in all the transcripts that you read that claimed any knowledge as to how much Bioff kept of that money and how much Brown kept of that money, besides those people?

A. I believe there was a bookkeeper for this type of venture who—

Q. What?

A. His name was Isadore Zevins.

496 Q. Did he claim he knew how much Brown kept of the money?

A. Yes, he did.

Q. Did he claim he knew how much Bioff kept of the money?

A. Not kept—how much they received and the distributive shares.

Q. I am trying to find out what you base your opinion on that Bioff kept a certain amount of money.

A. I never—I don't know what anyone kept. What each one's distributive share was, when it was received, that's all I can guide myself by.

Q. Now, about the amount he kept, just to illustrate what I am trying to drive at so far as you are concerned, Bioff could have kept a sum that was bigger or smaller, so far as you know the fact is concerned?

A. So far as I know the fact, he couldn't have kept more than his distributive share.

Q. All you have to go by is what you found in that transcript, isn't that right?

A. That is correct.

Q. Now, you had to rely on the transcript in order
497 to form some opinion as to how this money was distributed among the people you regard as potential taxpayers.

You got your information from the transcript, didn't you?

A. Yes, sir.

Q. Did anybody besides Bioff and Brown furnish you some information by way of that transcript as to how that money was divided up?

A. I mentioned Mr. Isadore Zevins, the bookkeeper or cashier for these sums of money.

Q. Do you mean to say that Mr. Zevins testified that he had a record of this money?

A. He may not have testified in court. Mr. Zevins made a distribution of certain sums.

Q. Do you have a copy of that transcript?

A. I don't have it but I think it was available.

Q. Well, it will be available over the noon hour, I think. We have one here in the file, your Honor, that your Honor takes judicial notice was filed in support of some preliminary motions.

I will ask, over the noon recess, for you to try to get hold of the transcript of that trial because I am going to
498 ask you some more questions about what Mr. Zevin said.

By Mr. Barnett: Your Honor, according to my recollection of the transcript of that trial it will stand about this high (indicating), and for a man to be expected to read it through over the noon hour will be virtually impossible.

By Mr. Stewart: Well, that doesn't prevent him from telling what he thinks of it.

By The Court: If he wishes to he may refresh his recollection. If he doesn't want to, that is up to him.

By Mr. Stewart:

Q. So, when you were trying to figure out the distribution of the money, assuming that the large sum that you said here, a million eight hundred thousand, assuming that that was obtained by a group of people—you relied on what you found in that record to divide it up into two-ninths to this one and two-nineths to that one, isn't that right?

A. To a great extent, yes, sir.

499 Q. What else did you rely on?

A. Statements made by people who did not testify at the trial.

Q. You found that in the form of statements?

A. Yes, sir.

500 Q. Did any of those statements include something where persons claimed that they talked to Paul DeLucia?

A. Not to my recollection.

Q. There was no such statement in the file, was there?

A. About DeLucia? No.

Q. That is right.

A. That is right.

Q. So, as far as your transcript is concerned, in so far as those statements are concerned, Paul DeLucia could have gotten 100 per cent of the money, so far as you are concerned? Is that right?

A. He could have.

Q. Or, he could have gotten none of it?

A. I wouldn't know.

Q. You wouldn't know?

A. No.

Q. But, from a tax standpoint, you figured out as best you could from what you had out of a transcript and you sent him what you call a "90 day letter," isn't that right?

501 A. I didn't send that letter. Someone else did.

Q. It was sent?

A. It was based on my report.

Q. A 90 day letter based on your report was sent?

A. That is right.

Q. This is the first time that was mentioned before the jury.

Would you be good enough to tell the jury what you mean by the term "90 day letter?"

A. Well, a "90 day letter" is sent to a taxpayer where there has been a proposed assessment of additional tax and no agreement has been reached in the field.

90 days is given the taxpayer in which to reply, either accept it, or file a petition.

By Mr. Barnett: A petition where, Mr. Ruggaber?

By The Witness: Pardon?

By Mr. Barnett: A petition where?

By The Witness:

A. (Continuing) With the Tax Court, which is a separate court particularly and only for tax matters.

502 By Mr. Stewart:

Q. And if the taxpayer doesn't file that petition, and he receives that 90 day letter by registered mail, the law creates a certain presumption, doesn't it?

A. That is right.

Q. What is that presumption?

A. That he owes the tax.

Q. And that presumption is just for the purpose of the Tax Court, isn't it?

A. That is right.

Q. And that means that he would lose that case if he didn't take some action?

A. That is correct.

Q. Then, is it true that in your practice you find that after the taxpayer receives that 90 day letter by registered mail, he had that length of time in which to retain a lawyer, maybe, or somebody, and take it up with you as to how much he might have to pay, isn't that right?

A. It would be taken up not with me; with the Internal Revenue Service at that time.

Q. When I said "You," I mean all the agents.

A. That is right.

503 Q. With your department?

A. That is right.

Q. And if possible, the taxpayer and the agents in charge arrive at an agreement concerning what is actually due?

A. That is correct.

Q. Or what the Government is willing to accept in settlement, is that right?

A. That is correct.

Q. In your experience, you know it happens at times that the Government accepts less than is in the 90 day letter, isn't that right?

A. Sometimes.

By Mr. Barnett: Your Honor, I object to this. What the Government does or doesn't do with respect to these, I don't see that it has any relevancy to this case.

By The Court: I presume he is leading up to this compromise here.

By Mr. Stewart:

Q. Mr. Ruggaber, have you examined the printed reports—

By Mr. Stewart: Mr. Clerk, may I have those ex-

504 hibits?

By Mr. Stewart:

Q. I will show you what has been marked Defendants' Exhibit C, which has a heading on it, "Re Paul DeLucia, Summary of Income, Adjustments Thereto and Commissioner's Adjustments to Others."

I ask you whether or not you have seen that before.

A. Yes, sir, I saw that over the weekend.

Q. Are you prepared now, Mr. Ruggaber,—you see, I am not an expert in your line of work and you are, and as I listened to your testimony, it was along the line that this summary purports to summarize, isn't that true?

A. That is correct.

Q. Is there any difference in your report, your summarization, that you find between what you have concluded and what Mr. Bernstein has concluded in the report before you?

A. Yes, sir, a slight difference.

Q. Will you point them out, please?

A. The year 1938—

By Mr. Barnett: Your Honor, it seems to me we
505 are getting into part of his case here, rather than cross examination on the work that Mr. Ruggaber has done.

By The Court: Have these been received in evidence?

By Mr. Barnett: No, they have not, your Honor.

By The Court: They were merely identified.

By Mr. Stewart: Well, it is cross examination.

By The Court: I know—

By Mr. Stewart: This is a field of expert testimony. Now I am confronting him with the analysis by our experts.

By The Court: You are confined to the direct examination for your cross. Now you are asking him to compare some other document with his own testimony, either to reconcile the figures or not to reconcile them.

By Mr. Stewart: In view of the fact he says the difference is slight, wouldn't it be better for us to find out
506 what it is?

By The Court: I think so. I don't see anything wrong about it, but these documents ought to be in evidence, and they are your documents.

By Mr. Stewart: They will go in evidence.

By The Court: The jury never saw them or heard of them before.

507 By Mr. Stewart: I will offer them at the conclusion of this witness' testimony, if that will be satisfactory.

By Mr. Barnett: I don't think that is proper, your Honor, to offer it on cross examination.

By The Court: No. I will let him explain the differences merely for brevity, to see how short we can make it.

By Mr. Stewart:

Q. Will you point out the differences you find, if any.

A. For the year 1938 there is an item in here that says "Adjustment per Commissioner's ninety-day letter, redistribution of additional income." It is shown for the year 1938 as $16,877.80.

My adjustment was $14,000-something. However, whoever wrote the ninety-day letter went back to the original return as filed, whereas my report is based on Revenue Agent Klein's previous examination, and the difference between 16,877 and the amount that I show as additional income in my report is the difference that Mr. Klein
508 set up.

The net result is exactly the same, where it says total of columns 2 and 3 hereof after Commissioner's adjustment. I have the corrected income of $73,827.00 and so does this report here.

Q. Have you pointed out the only differences that you find?

A. That is the only difference as to Paul DeLucia.

Q. And that difference amounts to about $2,000.00?

A. $2,799.00, I believe, something like that.

Q. And then it winds up, if you analyze it further, it amounts to about the same thing?

A. Yes, sir.

Q. As I understood your direct testimony as you were going by, I heard you mention a sum of about $400,000.00?

A. $404,000.00, yes.

Q. Roughly speaking, without going into detail, it was your opinion after you examined this transcript and made up your report that Paul DeLucia as his distributive share had available about $400,000.00 that came out of that case, is that right?

509 A. That is the amount I allocated to him, gross.

Q. See if I can make it clear to me. If I can understand it, maybe the jury can understand it.

What you did, Mr. Ruggaber, after you decided that Paul DeLucia must have gotten somewhere around $400,000.00 out of that transaction, you went over his previous returns, and where you found that he had paid a sum of money to the Government on his return that he had labeled the income as miscellaneous, you gave him the benefit of that and just assumed that that was part of that $400,000.00, isn't that right?

A. I didn't give him the benefit of anything. I just—income of this type is properly reported as miscellaneous, and I wasn't able to distinguish or identify what he had reported. Therefore I gave him credit against the $404,000.00 for the amount shown as miscellaneous income on his return.

510 Q. While you were working on that and preparing the data for the 90 day letter, you realized that that letter might be the subject of a contest in the Tax Court, didn't you?

A. Every case I work on could be the subject of a Tax Court case.

Q. So as you went over it, you gave the taxpayer the benefit by giving him credit of the taxes paid in previous years where he had only labeled them "Miscellaneous," isn't that right?

A. I gave him credit for the "Miscellaneous" reported, yes, sir.

Q. But as far as you know, when that fact becomes of some importance in a different type of case, like a criminal case, as far as you know as a fact, you don't know whether that $400,000 money was in the "Miscellaneous" income, or not, do you?

A. All I—

Q. You can't tell from the returns, can you?

A. None of it was identified as to source.

Q. And it was unidentified as far as you were concerned?

A. That is right.

Q. So when he was paying in previous years and 511 he called it "Miscellaneous," he was paying on a sum of money that you had no notion about where it came from, isn't that right?

A. On a sum of money lesser than the $404,000.

Q. Let's leave the $400,000 out for a moment to see if we understand each other.

As you picked up his returns in those previous years and you found he said "Miscellaneous, $75,000," for instance, you couldn't tell from the return what that income was, could you?

A. I could not.

Q. So that when you hunted around and looked through that transcript and found where Bioff and Brown and other people said that large sums of money had come to this group, you took the position as a Revenue agent that

that was money that they may not have paid taxes on, isn't that right?

A. Yes, sir.

Q. So your job as you examined all the available evidence was to try to figure out how much Paul DeLucia actually realized out of that case, isn't that right?

A. Yes, sir.

512 Q. And then after you figured out that each one of these people in the group got $400,000, you carried your investigation a step further and consulted his previous returns to figure how much you thought he ought to pay in taxes, isn't that right?

A. Not how much he ought to pay. I didn't know what he ought to pay. I figured out what he had reported as "Miscellaneous," and this is considered the same type of income, and I allocated each year's distributive share towards that return, and if the distributive share was lesser than what was previously reported as "Miscellaneous" income, I did not charge any additional.

If the distributive share was greater than that reported, I charged him with the difference.

Q. But as far as you know, and I believe you have already answered this, he could have gotten the $400,000 and not paid anything on that—as far as you know, isn't that right?

A. As far as I know he could have, yes.

515 By Mr. Stewart: That's all the cross examination, your Honor.

Redirect Examination.

By Mr. Barnett:

Q. Mr. Ruggaber, Mr. Stewart asked you concerning the procedure that followed after a notice of deficiency, or, what is commonly called a ninety-day letter is con-

cerned—what happens thereafter—and he asked you if it was not a fact that the taxpayer, upon receiving such
516 a letter, either had to contest it or pay the tax.

Do you recall that?

A. Yes, sir.

Q. The taxpayer has another option, does he not, that is to say, he may pay the tax and sue for refund if he desires to, may he not?

A. That is correct.

518 CLAYTON MARSH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Barnett:

Q. Prior to your retirement, what was your occupation?

A. I was technical advisor and special assistant to the head of the Appellate Division, Internal Revenue Service, at Chicago, the Chicago Division.

Q. When did you retire?

A. December 31, 1956.

Q. Prior to your retirement, how long did you hold that position?

A. Since the middle of 1938.

519 Q. Were you in that position during the years 1945 and 1946?

A. I was.

Q. During the month of September, 1945, were you, as part of your official duties, assigned the question of the income tax liability of Paul DeLucia?

A. I was.

Q. Can you tell us whether or not that was a docketed or undocketed case at the time you got it?

A. It was a docketed case, one of a group of docketed cases which were assigned to me for consideration.

Q. Will you explain to me what a docketed case is as distinguished from an undocketed case?

A. A docketed case is one in which the Commission of Internal Revenue has issued notice as required by law, to a taxpayer, notifying him of deficiency in tax for a particular year or years and allowing the taxpayer a period of 90 days within which to file a petition with the Tax Court to take exceptions to any assignments that he doesn't agree with.

520 Q. Did the case of Paul DeLucia have a Tax Court file number on it when you received it?

A. It did.

521 Q. And were there Tax Court pleadings in your file when you received it?

A. There were.

523 By Mr. Barnett: I am offering, your Honor, certified and exemplified copies of certain pleadings in the Tax Court, which I understand Mr. Stewart has no objection to.

By Mr. Stewart: No objection.

By Mr. Barnett: The first such document is Government Exhibit No. 56, which is the deficiency letter sent to the taxpayer.

The next such document is Government's Exhibit 57 which is the petition of the taxpayer in the Tax Court of the United States.

The next document is Government Exhibit 58, which is the answer of the Internal Revenue Service to the taxpayer's petition in the Tax Court.

The next document is Government Exhibit No. 59, a reply of the petitioner DeLucia to the Government's answer in the Tax Court.

The next document is Government Exhibit No. 61,
524 which is a stipulation between the taxpayer DeLucia and the Chief Counsel of the Internal Revenue Service with respect to the amount of tax to be assessed.

The last is Government Exhibit 61-A, which is the decision of the Tax Court rendered in conformity with the stipulation between the parties.

By The Court: They may be received in evidence.

(Said documents so offered and received in evidence, were marked Government Exhibits 56, 57, 58, 59, 60, 61 and 61-A.)

525 By Mr. Barnett:

Q. Now, Mr. Marsh, at the time that you received this case, it was a docketed case?

A. It was.

Q. Was Government Exhibit No. 56, the deficiency notice and the attched statement of how the tax is computed, in the file at the time that you received it?

A. It was.

Q. Was Government Exhibit No. 57, the petition of the taxpayer, in the Government file at the time that you received it?

A. It was.

Q. Was Government Exhibit No. 58, the answer to the taxpayer's petition, in your file at that time?

A. It was.

Q. Was Government Exhibit No. 59, the reply of the petitioner, in the file at that time?

A. It was.

Q. I hand you Government Exhibit No. 61, the
526 stipulation, and ask you if that was in the file at the time you received it?

A. It was not.

Q. Was that stipulation eventually prepared as a result of your negotiations with the taxpayer?

A. Yes, sir.

Q. Or his representative?

A. It was. I prepared it.

Q. Mr. Marsh, I would like to call your attention to the first page of Government Exhibit No. 56, the deficiency letter, and I would like to call to your attention the figures and the phraseology:

"Discloses a deficiency of $94,090.99 and $27,540.73 in penalty,"

and I will ask you to compare that figure, twenty-seven thousand, et cetera, with the second page of the statement and ask if you can tell us whether that is a typographical error.

A. That is a typographical error. That "twenty-seven" should have been "$47,540.73" instead of "$27,540.73."

Q. Is that shown by the second page of the document?

A. It is.

527 Q. Now, Mr. Marsh, at the time that you received this case in the docketed condition, you had before you the petition of the taxpayer, and you had the deficiency notice, is that correct?

A. Yes, sir, in the file.

Q. Are you familiar with Revenue Agent Ruggaber's report of his examination of this taxpayer?

A. I was at the time. I familiarized myself with it after I received the case.

528 Q. And was the deficiency notice to the taxpayer prepared in substantial conformity with the figures in Mr. Ruggaber's report?

A. As I recall, it was. It had been prepared sometime before I got the file.

By Mr. Barnett: Your Honor, at this point I would

like to read a couple of paragraphs from Government's Exhibit No. 57, the petition of the taxpayer in the Tax Court.

By The Court: You may proceed.

* * *

535 By Mr. Barnett:

Q. I will leave Government Exhibit No. 56 with
536 you, Mr. Marsh, so that you can refer to it if you need to.

After receiving this case in your office in 1945, Mr. Marsh, what was the first thing you did in connection with it?

A. I studied the case to find out the issues, what the adjustments which had been made in the deficiency notice were and the exceptions taken by the taxpayer in the petition to the Tax Court.

Q. After you had done that, what did you do?

A. I then called Mr. Eugene Bernstein, who was shown as the attorney of record, and who signed the petition with the taxpayer, to arrange for a conference with the Appellate Division, then the technical staff, for a discussion of the case.

Q. When you say "arrangement with the Appellate Division," you are talking about yourself, are you not?

A. That is right.

Q. You were the representative of the Appellate Division?

A. I was.

Q. Did you have such a conference with Mr. Bernstein?

537 A. I did.

Q. Do you recall when it took place?

A. There was more than one. There was one that I recall in January, 1946, and another one in March of 1946, I believe.

Q. At the January conference, that took place in your office, I assume?

A. It did.

Q. What was your office located?

A. In the Board of Trade Building.

Q. In Chicago, Illinois?

A. In Chicago.

Q. Who was present at the conference?

A. Mr. Bernstein, representing Mr. DeLucia; Charles Munns, Special Attorney in the Division Counsel's Office; Revenue Agent William Ruggaber; and Special Agent Tracey Stains, as I recall.

538 Q. Would you tell us what was said and by whom at that conference, please?

A. Well, we went over the petition, the adjustments that were made, and Mr. Bernstein told me that he had been in touch with Mr. DeLucia, and Mr. DeLucia had denied to him that he had received any part of this so-called extortion money, and that he had kept memorandum records of all the income which he had received, and that his returns as filed included all income which he had received during all the years from 1935 to 1941, the years that I had.

Q. Do you recall any more of that conversation in January, Mr. Marsh?

A. I don't recall the exact conversation.

Q. Have you exhausted your recollection with respect to the conversation?

A. Well, there was a discussion—Mr. Bernstein said that the taxpayer denied that there was any tax due the Government whatever, that the returns as filed included all income and that he didn't owe anything at all; that the

adjustments made in this deficiency notice were all in
539 error. Exception was taken to every one of them.

Q. Was anything said about net worth?

A. I inquired from Mr. Bernstein about the records, and so forth, which would show Mr. DeLucia's income.

He said that there had been no permanent records maintained, but that he had made some investigation of his own, and he could find no evidence which would indicate that Mr. DeLucia enjoyed an income in excess of the income reported in his returns for the years that we had under consideration, 1935 to 1941.

Q. Does that substantially conclude that conversation, so far as you can recall?

A. Well, of course, we discussed the division of the so-called extortion money and how the figures were arrived at that were shown in the deficiency notice. Those were disclosed to Mr. Bernstein.

Q. Will you tell us what was said on that subject?

A. Well, he was advised that—

Q. You said something to him, is that correct?

A. What is that?

540 Q. I say, you said something to him.

A. Yes. I told him or showed him how the income had been determined.

Q. What did you tell him?

A. I told him that this deficiency notice had been issued on the basis of the agent's report, which shows that Mr. DeLucia had participated with a number of others in this so-called extortion money, and that Mr. DeLucia had been charged with two-ninths of the total over the different years as was disclosed in the New York trial.

Q. Was he charged with the entire two-ninths or was he given credit for what was on his returns?

A. He was given credit.

Q. What did you say to Mr. Bernstein about that?

A. Well, I think, I am sure we showed Mr. Bernstein what years the total amounts; the total two-ninths had been included as income to him. Some years the two-ninths had been reduced by the amounts reported by Mr. DeLucia in his return as miscellaneous income or income from some undisclosed source.

541 Q. And that matter was told to Mr. Bernstein at that time?

A. Yes.

Q. Did he say anything about that himself?

A. He said that Mr. DeLucia had told him that he didn't get any of this income; that that was entirely wrong, and that all income that he got from every source was reported in his returns as filed.

Q. Under what heading?

A. Whatever heading was shown on the returns.

Q. Was anything said about source of income?

A. I asked Mr. Bernstein about the source of Mr. DeLucia's income, and he said that Mr. DeLucia had not disclosed to him the sources of his income. He had simply told him that all income that he had received had been reported.

Q. You referred to a later conversation in March 1946?

A. We had another conference in March, 1946.

Q. Where did that take place?

A. In my office.

Q. Who was present?

A. Mr. Bernstein, representing Mr. DeLucia, and

542 Charles Munz, the special attorney for the Division Counsel, and myself.

Q. What was said on that occasion and by whom?

A. Mr. Bernstein told me that since our previous conference he had seen Mr. DeLucia and that Mr. DeLucia had told him or repeated that he had not received any part of the so-called extortion funds and insisted that all income which he received had been reported in his returns, and that there was no reason for the Government to charge him with additional income which he had not received.

Q. Was anything further said at that meeting?

A. We discussed a basis of possible settlement of the case. That was the purpose of our conferences, to reach a settlement of the case if possible without a trial before the Tax Court.

There were many factors to be considered in reaching a settlement. Those were discussed, the fact that the taxpayer was incarcerated, had served a small part of a long sentence, and the possibility that he would remain incarcerated for many years, which would prevent a trial of the case before the Tax Court.

Also the fact that in the meantime, nothing could
543 be done if the case wasn't settled. It would lay dormant for a number of years, and the possibility that when the taxpayer was released eventually, if the Government were to secure judgment, whether it could be collected, whether the taxpayer would have sufficient assets to pay it.

We considered the availability and reliability of witnesses, and the question of fact as to whether and to what extent Mr. DeLucia did participate in the so-called extortion funds.

544 By Mr. Barnett:

Q. Was any proposal made at this meeting?

A. There were proposals.

Q. Any settlement proposals?

A. Yes. We—Mr. Bernstein, finally, he made proposals first. I believe the first one was a proposal to settle it on the basis of 25 per cent of the amounts included as additional income to the taxpayer in each year and the case was associated, in my hands, with the companion case of Louis Campagna.

Both cases were considered together. I considered them as one because the same issues were involved in the Campagna case that was considered in the DeLucia case.

I refused to settle one case without the other and I insisted, from the first, when I told Mr. Bernstein that any settlement that we reached in this case, would have to be cash on the barrel head, I wanted to have the money paid before we entered any agreement because I realized if we made an agreement—

Q. Not what you realized, Mr. Marsh.

545 Just tell us what was said. Go ahead.

A. Mr. Bernstein finally agreed to settle the case on the basis of including, as income, as additional income to Mr. DeLucia, 50 per cent of the amounts which were included as additional income in the 90 day letter, and computations—provided, no penalties were asserted, and it was tied in with a comparable settlement in the Campagna case.

Q. All right.

Now, do you recall the total amount of additional income that was charged in the deficiency notice? I think you have the deficiency notice before you.

Do you recall the total amount of additional income for the several years?

A. Yes. The additional income was something like two hundred and twenty-seven or two hundred and twenty-eight thousand additional out of a total of some four hundred and four thousand, I believe was the total allocated to Mr. Campagna—to Mr. DeLucia.

The same amount was allocated to Campagna, but,
546 Mr. DeLucia was charged with approximately four hundred and four thousand and he was given credit for having reported the difference between that and something like two hundred and twenty-seven or two hundred and twenty-eight thousand additional for all these years that I have.

Q. And was the settlement that you and Mr. Bernstein agreed upon, based upon, in so far as income,—was it $227,000?

A. It was approximately one-half or around one hundred and fourteen thousand, which was the additional income that we agreed to settle the case on.

Q. I see.

Now, are the terms of that settlement incorporated in Government Exhibit 61, No. 61, the stipulation?

A. The effect of it is. The adjustments aren't shown. The stipulation shows only tax liability but this is the effect of it, yes.

547 Q. It doesn't show income on it?

A. It shows no income. It shows only tax assessed and paid and amount due.

Q. Now this agreement with Mr. Bernstein was reached in March of 1946, was it?

A. It was. It was conditioned, however—I made it clear to Mr. Bernstein that any agreement that we reached was based on payment of the money; that if there was no payment, there was no agreement—it had to be paid.

Q. Subsequent to that meeting in March, did you receive a letter from Mr. Bernstein concerning this matter?

A. I believe I did, I recall.

Q. I hand you what has been marked Government's Exhibit 61-B for identification and ask you if you received that letter.

A. Yes, I did, dated April 20, 1946.

By Mr. Barnett: Your Honor, I will offer in evidence Government Exhibit No. 61-B.

By Mr. Stewart: I have no objection to it.

548 By The Court: It may be received in evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit 61-B.)

550 By Mr. Barnett:

Q. Mr. Marsh, there is a reference in this letter to the related transferee case of Nancy DeLucia, Docket No. 8804. Will you explain to us the meaning of that?

A. There was also a deficiency notice on a ninety-day letter issued to Mrs. DeLucia, Nancy DeLucia, as transferee of Paul DeLucia.

Now, "transferee" under the income tax law, is one who receives the property of another without adequate consideration or without the tax having been paid on it and if the taxpayer has disposed of his assets, giving them to another in such a way as to leave him without funds, the Government has a right to proceed against the party to whom he delivered the property as a transferee and, thus, recover the tax which the taxpayer was liable for and which he should have paid before he transferred the property away.

In this particular case, property had been found in the name of Nancy DeLucia, Paul DeLucia's wife, and the position taken of the deficiency notice was that she

551 had no separate income and that the property that was in her name had been transferred to her by Paul DeLucia and with the possibility that he was not left with sufficient assets out of which the tax due the Government could be paid when it was finally determined.

552 Q. Well, this settlement that you entered into with Mr. Bernstein, disposed of the transferee liability, the potential transferee liability of Mrs. DeLucia also, isn't that right?

A. Yes. When he agreed to pay his total liability, that left no basis for liability on the part of Mrs. DeLucia. It was paid by him.

Q. Now, you received this letter sometime in April, 1946. Did you have any subsequent conversations with Mr. Bernstein?

A. Yes, I did.

Q. When?

A. I don't recall any particular date, but there were various phone conversations.

The tax was to have been paid within sixty days from the date this settlement proposal was accepted.

Q. And when was it accepted?

A. I believe it was sometime in May, finally, sometime in May of 1946. I don't have—if I had the file, I could tell. But, I don't—I think it was in May of 1946 that the agreement was accepted. It was after the letter of
553 April the 20th, anyway.

Q. I see. Subsequently, you had a telephone conversation with Mr. Bernstein?

A. I had several conversations with Mr. Bernstein, from time to time, because after we had reached a settlement and I had made my recommendation based on payment of the tax, the case was transferred by me back to the Division Counsel for final drawing of the stipulation and settlement. I was through with it.

So far as I was concerned, a settlement had been reached and, based on, contingent upon the payment by the taxpayer, the case was all through, as far as I was concerned. I had other things.

Q. Will you tell us approximately when the next conversation was that you had with Mr. Bernstein?

A. It was sometime after April. I had several conversations.

Q. After April?

A. Yes, because—

Q. Relating to this case?

A. Yes, because I had transferred the case back to Division Counsel.

554 Q. If you will just testify to the conversation, Mr. Marsh—

A. I wanted to tell you why.

Q. Well—

A. Well, because it was out of my hands. It was in the hands of the Division Counsel and they could call—they were waiting for payment and they would call me to see what I had heard about the payments, when the payments were to be made.

Q. Will you tell us about the next conversation you had with Mr. Bernstein?

A. I would call Mr. Bernstein at different times and ask him when the payment was going to be made; that sixty days had gone by and the payments hadn't been made.

And, he would tell me they were getting the money together, that it was being accumulated.

As I said before, the Compagna case and Mr. DeLucia's case were together. The two of them involved a cash settlement payment of, I think, something $90,000, and I had refused to settle one without the other.

Q. If you will just tell us about the next conver-
555 sation you recall with Mr. Bernstein.

A. It was with respect to the accumulation of the funds and he told me they were getting the funds together.

556 Q. All right. And then did you have—that was in a telephone conversation, was it?

A. There was more than one telephone conversation with respect to the same matter.

Q. All right.

A. Over a period of months.

Q. Did you eventually collect the money?

A. We did, yes.

Q. When did that take place?

A. That was in October.

Q. 1946?

A. 1946.

Q. Where did it take place?

A. In Mr. Munz' office, in the Board of Trade Building.

Q. And who made the payment?

A. Mr. Eugene Bernstein.

Q. To whom did he make the payment?

A. I think the checks were made to the Director, to the Collector of Internal Revenue.

Q. Did he write out the checks in the office?

A. I believe so. I believe I saw him write the checks.

Q. To whom did he give the checks?

557 A. I am not sure whether they were given to Mr. Munz or whether he was directed to take them over to the Director.

Q. Were the checks exposed in your office?

A. Oh, yes. The figures were computed there and he made out the checks.

Cross Examination.

By Mr. Stewart:

Q. Mr. March, you are a lawyer, too, aren't you?

A. Yes, sir.

Q. What was your position with the Internal Revenue

people when this transaction took place?

A. I was special assistant to the head of the Appellate Division, and technical advisor.

Q. And when this case was assigned to you and you received the files, you were practically the lawyer for the Government in the case?

558 A. That is true.

Q. And as part of your discharge of your duty as a lawyer in the case, you had some discussions as to whether or not it was possible to settle the matter, is that right?

A. That is right.

559 Q. That is nothing unusual, is it, in your practice?

A. That is usual.

Q. And it is usual in your practice for these lawyers to ask you what the foundation of your claim is and discuss it with you?

A. It is.

Q. They also indicate to you possible weaknesses in your case?

A. Yes, sir.

Q. That is done by the lawyer for the purpose of arriving at a small settlement or as small as he can make it, that is right, isn't it?

A. True.

Q. Now, are you left alone in the decision of whether or not a settlement is satisfactory to the Government or must you take that up with superiors?

A. That was largely in my hands.

Q. You have already enumerated to Mr. Barnett some of the things that you considered in determining whether this was a case for settlement or not, isn't that right?

A. Yes, sir.

560 Q. There are times and there have been times in your experience when the agency has sent out a de-

ficiency notice with a certain amount in it, and you felt you could collect the full amount and you wouldn't take anything less, that is true, isn't it?

A. If it was justified, yes.

Q. Then there are other cases where you would take various things into consideration, and you think it is a good case for settlement, isn't that right?

A. That is right.

Q. And after you looked into this case and talked with Mr. Bernstein and looked over your files, you came to the honest conclusion as a lawyer and as an experienced man in that service that this was a good case for settlement, isn't that right?

A. I did.

Q. The first offer that was made to you by Mr. Bernstein was one that you rejected?

A. Yes, sir.

Q. When he finally got up to the offer that was finally accepted by you, you felt that that under all the cir-
561 cumstances was a reasonable offer which the Government could very well take?

A. I did, and I so recommended.

Q. You were satisfied with it?

A. I was satisfied that that was as good as we could justify on the basis of the evidence.

Q. As a lawyer and with your experience in the Government service, you know that after you accept that settlement offer and after the money is paid in and then the matter is approved by the Tax Court, that is the end of the matter, isn't it?

A. Supposedly.

Q. As a matter of fact, it is a matter of law that you couldn't open that up if you wanted to now, could you?

A. I am no longer in the service.

Q. I say, if you were in the service, you couldn't open that up?

A. It is final.

Q. That is final, isn't it?

A. Yes.

Q. And you looked at some pleadings that were filed by Mr. Bernstein when the files were given to you.

562 As I understand your testimony, before you got the case, the pleadings were already made up in the Tax Court?

A. That is right.

Q. That is right, isn't it?

A. Yes, sir.

Q. So you were new to the case at that stage?

A. Yes.

Q. Now when you looked over the pleadings—I just looked at them hurriedly here, but you might look at them if you require such information—you don't find in there where Mr. Bernstein said in the pleadings that Paul DeLucia didn't get the money, do you?

A. I don't recall now.

Q. As a matter of fact, you regard pleadings as just what they are, they are just in order to set up the issues and get ready to go to trial, isn't that right?

A. We hope it contains some facts, too.

Q. Well, lawyers sometimes say things they can't prove. That has been your experience, hasn't it?

A. It certainly has.

563 Q. And they put up as good a front as they can from their side of the case before they negotiate with you for settlement, isn't that true?

A. True.

564 Q. When Mr. Bernstein was trying to get you to accept 25 per cent and telling you that his information

and investigation disclosed to him that Mr. DeLucia hadn't received any of this money, you took that for just what it was worth, didn't you?

I mean, you didn't believe it, did you?

A. No.

Q. And you didn't act upon it, did you?

A. No.

Q. Your position was that he got that money and he owed the tax on it, isn't that right?

A. I was satisfied he got some. I tried to get the facts as to what the extent of his participation in it was.

Q. If you had been in possession of proof which would satisfy you as a lawyer that he got $400,000.00, you would have stuck to that position, wouldn't you?

A. I certainly would have.

Q. Then when you looked over and found certain weaknesses in your case, you decided that the offer of fifty
565 per cent was a pretty good deal for the Government, isn't that right?

A. Provided it was paid, yes,—tied in with Campagna.

Q. All right. We heard your conditions, and we would like to have that explained a little more fully to the jury.

You put that condition on because you weren't going to settle for some judgment that you probably would have trouble collecting, isn't that right?

A. That is right.

Q. So part of your offer of settlement was if you paid this money into the Collector's office and I can see that it is paid, then we will go ahead and have the Tax Court approve it?

A. With both cases, yes, sir.

Q. Now it was paid in, wasn't it?

A. Yes, it was.

Q. It amounted to something like $114,000.00 for the two people?

A. Around $190,000.00 with interest, I think.

Q. $190,000.00, and you saw that that was paid?

A. Yes, sir.

Q. Now you are not here trying to upset that,
566 are you, or go back on it?

A. I am stating what I did.

Q. I mean, you have no reason to want to change that settlement?

A. I couldn't if I wanted to.

Q. When you talked to Mr. Bernstein the first time, as you have told us, you came into the case after the original work had been done by some other agents, including Mr. Ruggaber?

A. That is true.

Q. Did you find a report made by Mr. Ruggaber to his superiors, or what you call an RAR or Revenue Agent's report?

A. It was in the file.

Q. You found that in the file?

A. Oh, yes.

Q. Did you find from your file that a copy of that report had been sent to the taxpayer?

A. They don't furnish taxpayers with copies of the report.

Q. This one was not furnished to the taxpayer, was it?

A. No taxpayer gets the reports.

Q. Isn't it true that when Mr. Bernstein came to
567 see you the first time, he told you that he couldn't determine from the deficiency letter what the basis of this claim might be? Isn't that true?

A. That is true.

Q. And he was seeking more information from you, isn't that right?

A. That is right, and I gave it to him.

Q. Did you give him a copy of Mr. Ruggaber's report?

A. No, sir.

Q. You never talked to Paul DeLucia, did you, in your life?

A. No.

568 Q. At the time that you were talking with Mr. Bernstein, you knew as a fact that Mr. DeLucia was locked up somewhere in a Federal penitentiary, is that right?

A. I assumed it.

Q. You were told that, weren't you?

A. Yes. The Commissioner's notice was addressed to him at that address.

Q. There is still another thing that you take into consideration and you did take into consideration when you were determining the value of your case, whether or not it was to be settled. Let's see if I can remind you of something.

When you found from your file or report or something that a certain large sum of money had been traced to the hands of a taxpayer, the mere finding of that money in his hands did not mean that it was taxable, did it, that alone?

By Mr. Barnett: Your Honor—

By the Witness:

A. Not necessarily.

By Mr. Barnett: Your Honor, I think this is a 569 hypothetical question that has no relation to this particular case.

By the Court: I think the objection—

By Mr. Stewart: I will show by my questions that it has something to do with this case.

By Mr. Stewart:

Q. It is true that the mere finding and tracing of a large sum of money into the hands of a taxpayer, that alone, isn't enough for you to conclude that you have got a good tax case?

A. That is right.

Q. Because it is true that sums of money are taxable sometimes and sometimes they are not, depending on some other things that you might have to prove?

A. That is true.

Q. One of those things you have to prove is that it is income, isn't that right?

A. Yes, sir.

Q. Some of the things that are not income would be a case where a man obtained money through embezzlement, say, like in the Wilcox case, isn't that true?

570 A. Occasionally, yes.

Q. As a matter of fact that possibility was discussed during your conversations with Mr. Bernstein, isn't that true?

A. That is true.

Q. So from the standpoint of the Government at the time you were acting as attorney for the Government, you thought you were acting in the best interest of the Government when you recommended this settlement?

A. I did.

Q. And you took all these things into consideration?

A. I did.

By Mr. Stewart: That is all.

Redirect Examination.

By Mr. Barnett:

Q. Mr. Marsh, there is only one point that I think needs clarification.

You say that you are an attorney?

A. Yes, sir.

Q. But in the position in the Bureau which you occupied, you were not the attorney for the Govern-
571 ment, were you?

A. No.

Q. There was another man, Mr. Munz, who was the attorney for the Government?

A. Mr. Munz was the special attorney. That was his official position.

Q. Although you were an attorney, your actual official duties were the technical adjustments of the tax matter, is that correct?

A. That is true.

572 NATE KLEIN,

Direct Examination.

By Mr. Barnett:

Q. Where do you live, Mr. Klein?

A. 5539 Hyde Park Boulevard.

Q. What is your occupation, Mr. Klein?

A. I am a group supervisor of the Internal Revenue Service, Cleveland office.

Q. But you live in Chicago?

A. I live in Chicago.

Q. Is that because of the recent transfer?

A. I was transferred in December, 1957.

Q. Prior to being transferred to Cleveland, Ohio, where were you employed?

573 A. District Director, Chicago, Illinois.

Q. In what position?

A. I was group supervisor in the Fraud Group.

Q. And how long were you in that position?

A. For about six years.

Q. Prior to being a group supervisor, were you employed by the Internal Revenue Service?

A. I was.

Q. For how long?

A. Since 1935.

Q. In what position?

A. An Internal Revenue Agent, field.

Q. As part of your duties as an Internal Revenue Agent, did you ever have occasion to audit the returns of income of Paul DeLucia?

A. I did.

Q. Do you recall when that was?

A. In December of 1940.

574 Q. And what years' tax liability did you audit with reference to Paul DeLucia?

A. The years 1938 and 1939.

Q. Were those returns assigned to you for a routine audit?

A. They were assigned to me.

Q. After you received the returns, what did you do?

A. I communicated with Mr. DeLucia through Clarence Converse, a special agent.

Q. That is to say, you had a communication with Mr. Converse about Mr. DeLucia?

A. Well, Mr. Converse I knew was able to locate Mr. DeLucia and so I asked him to get in touch with Mr. DeLucia and tell Mr. DeLucia I wanted to see him.

575 Q. And subsequent to that conversation, what happened?

A. Well, Mr. Converse brought Mr. DeLucia over to our office at 105 West Madison Street.

Q. Do you recall when that was?

A. The exact date was December 18, 1940.

Q. Is that a large office with several desks in it?

A. Yes, a very large office.

Q. And you had a desk in that office?

A. I did.

Q. Did a conversation take place at that time?

A. At the desk, yes.

Q. At your desk?

A. That is right.

Q. There was present yourself, Mr. Converse, and Mr. DeLucia?

A. That's right.

Q. How long a period of time did that conference last?

A. Oh, it lasted maybe about three hours.

576 Q. How long was Mr. Converse present there?

A. No longer than a half an hour.

Q. At the preliminaries?

A. At the preliminaries, just the introduction, and general conversation.

Q. And thereafter, you and Mr. DeLucia were there yourselves?

A. That is right.

Q. Now, will you tell us, Mr. Klein, as nearly as you can recall, the conversation that you had with Mr. DeLucia at that time and place?

A. Well, I asked Mr. DeLucia if he had any records from which I could verify the income he reported from miscellaneous sources and he gave me two, sort of not loose-leaf, but these Dime Store books, in which he told me

577 he kept all of his expenditures, and, on the basis of those books, he computed his miscellaneous income. The books reflected cash on hand the beginning of the year, cash on hand at the end of the year, and a list of items which were supposedly all the disbursements Mr. DeLucia had made during the year.

And, the method of computing the income was to take the difference between the cash balances that he had at the end of the year and those at the beginning of the year and that difference was added to the amount of the expenditures showed listed in these books.

Q. Did he tell that to you, Mr. Klein?

A. Yes, he did.

Q. Now, will you describe the books in a little more detail to us, that is to say, what was the size of the book, and what were the column entries?

A. As I recall, they were sort of an oblong book and they had a space where he listed the type of expenditure, and then I know there were two columns and the expenditures were divided in those two columns. They were
578 reflected in those two columns and each one of them were added up and then they were added together.

Q. Let us take a sample page, Mr. Klein, and beginning at the left-hand side of the page, was there a column or a space?

A. Well, as far as I can remember, there may have been some columns, but there was a blank space on the left-hand side of the book.

Q. And then were there columns for figures on the right-hand side?

A. That is right.

Q. That is where the two columns were that you were referring to?

A. As I recall, there were two of those columns used. There may have been more columns, there may have been more columns there, but there were two used with the figures.

Q. Were figures entered in those two columns?

A. That is right.

Q. Were the columns designated as having a purpose?

A. Yes. The expenditures seemed to be divided between a country home and a city home.

579 Q. And one column was used for the country expenses and the other for the city expenses?

A. That is right.

Q. Now, would the size of this book be approximately 8 by 11 or would it be larger or smaller as you recall?

A. Now, let's see. It was longer than it was wide. It was about twice as long as it was wide and, I would say it would be, I guess it would be about 12 inches long, about 6 inches short.

Q. And what years were there notations concerning in these two books?

A. Well, I can remember—

Q. Pardon me. Did you tell us how many books there were?

A. There were two.

Q. What years were they concerning?

A. I think there was 1939. I know there was 1938 and I know there was 1937.

Q. Were there entries in the books concerning the cash on hand with respect to each of those years?

A. Well, at the end of each year I believe there was a balance showed of the cash on hand.

580 Q. Was that broken down in any fashion?

A. Yes, it was broken down.

Q. How was it broken down?

A. Into cash in pocket, cash in vault, and cash in bank.

Q. Cash in pocket, cash in vault, and cash in bank was the last one?

A. That is right.

Q. Did you ask any questions in this conversation with Mr. DeLucia about the entries in the books?

A. Why, yes. I originally asked him how he computed his income, and he explained it with the entries in that book. I asked him if those were all the moneys withdrawn during the year, and he said, "Yes."

Q. He had withdrawn from what?

A. Withdrawn from, oh, the vault or his cash reserve, and he explained his method of bookkeeping was to put the money that he received into the vault, and whenever he took anything out he put a slip of paper in, what he took out, or a bill that he paid, and then those items would be entered into this book.

581 Q. They would be entered into the book as what?

A. As disbursements.

Q. Or expenditures?

A. That is right.

Q. Did you have any further conversation with him about the entries in the books?

A. Well, I did ask him his source of income.

Q. What did he say to that?

A. And if he could show where it came from, and he said his source of income was various things, that he gambled.

Q. Was what?

A. He was gambling.

Q. Anything else?

A. Oh, I think he explained his gambling, he said he gambled on the horses, the races, and sports, and things like that.

Q. Did you ask him any further questions concerning that?

A. I asked him if he kept any records of his gambling gains and the source of those gambling gains, and he said, "No."

Q. Did you compare the books that Mr. DeLucia
582 gave you with the income tax returns that he had filed for the years 1938 and 1939?

A. I did.

Q. What did you find as a result of that comparison?

A. I found that the method that he explained of computing his income, that is, the difference between his cash balance at the end of the year and his cash balance at the beginning of the year, adding on to all his disbursements of the year, amounted to exactly what he reported as miscellaneous income, with the exception of certain adjustments that he had made; that is, he had reduced that income by any moneys that he had received that were not taxable income.

I remember one of the items, I believe it was in 1939, he took a mortgage on his home for $30,000, and that money was evidently put into the vault, or wherever he held his money, and that was deducted from the amount of the income computed in the manner in which he had consistently computed income.

Q. Does that method of reporting income have a
583 name?

A. Well, you may call it an expenditure method.

584 Q. After your general discussion with Mr. DeLucia concerning the method that he used for reporting his income and what was included in the books, and after you had verified the totals shown on the books with the totals on the returns, what if anything did you do?

A. Well, I went over the additions.

Q. You went over the additions?

A. Of the disbursements, and I found some small changes. Then I believe there were a few more changes where there was a repetition of the same bill or the same disbursement, or what looked like the same disbursement, and I adjusted for those items.

Q. Did you make a record of what you did in connection with those books?

A. I did.

Q. What record did you make?

A. Well, I made a revenue agent's report showing the additional income and how it was arrived at.

Q. Did you list therein any figures that were shown on the books?

A. Yes. In arriving at the corrected miscellaneous
585 income, I showed the cash on hand at the beginning of the year, the corrected disbursements divided into the two categories, the city disbursements and the country disbursements, and the cash on hand at the end of the year.

Q. Are the figures that you included in your revenue agent's report for the cash on hand at the beginning and end of these various years identical with the figures that appeared in Mr. DeLucia's books?

A. They were.

Q. With respect to expenditures, did you make a total of the expenditures shown on the books?

A. I did.

Q. That was your total, was it, as distinguished from Mr. DeLucia's total?

A. That is right.

Q. Making allowances for mathematical errors, is that correct?

A. That is right, and eliminating, I think, in one year some items that looked as if they were put in there double.

Q. And the total that you then took off of those expenditures, did you record that in your report?

586 A. I did.

Q. Did you have any conversation with Mr. DeLucia with respect to the question of whether or not expenditures or cash were all shown on the books?

A. Well, that happened a long time ago. I would say that I asked Mr. DeLucia if that was the cash he had at the beginning of the year, and I took his word for it because there was no way we could check it.

Q. What did he say to you?

A. He said, yes, those were his cash balances at the beginning and the end of the year.

Q. What about the expenditures?

A. And those were his total expenditures for those years.

Q. I hand you what has been marked Government's Exhibit 62, and ask you if this is a true and correct photostatic copy of the internal revenue agent's report which you prepared as a result of this examination?

A. This is a typewritten copy of the report I prepared.

Q. Do you prepare your report in longhand?

587 A. In longhand, yes.

Q. And then the first copy thereafter is typed, is it not?

A. That is right.

Q. Is this a photostatic copy of that typed report?

A. It is.

By Mr. Barnett: Your Honor, I will offer into evidence Government's Exhibit No. 62, which is Mr. Klein's report.

By Mr. Stewart. There is no objection except the one I made that they don't have any business going back to those years.

By The Court: It may be received subject to the general objection.

By Mr. Stewart: Yes.

By The Court: You are talking now about the stipulation?

By Mr. Stewart: That is right, your Honor.

By Mr. Gorman: That will be understood that that is subject to Mr. Bulger's objection also.

588 **By The Court: That goes for you, too.**

(Said document, so offered and received in evidence was marked Government Exhibit 62 being as follows):

GOVERNMENT EXHIBIT NO. 62

Name of Taxpayer: Paul DeLucia,

PRELIMINARY STATEMENT

Examining officer: Ned Klein

Index:

Preliminary statement and schedules 1 to 5) 5 pages

Total —) 5 pages

Date of report: December 21, 1940

SUMMARY

Year	Deficiency
1938	$1,091.89
1939	2,491.71
Total	$3,583.60

The principal cause of change in tax liability is due to: the correction of expenditures and net worth used in determining income.

The changes were discussed with taxpayer, who agreed.

Status and reason for all exemptions: Married, living with wife who has no separate income, and has three dependent children under 18 years of age.

SCHEDULE 1

Year ended 12/31/1938

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$59,747.00
As corrected	$62,546.72
Net adjustment as computed below	$ 2,799.72

Unallowable deductions and additional income:

(a) Salary	$ 1,900.00	
(b) Other income	59,749.72	
Total—		$61,549.72
Nontaxable income and additional deductions:		
(c) Miscellaneous income	$58,750.00	
Total—		$58,750.00
Net adjustment as above		$ 2,799.72

SCHEDULE 1-A.

Year ended 12/31/1938

EXPLANATIONS OF ITEMS

(a) Salary	$ 1,800.00
To report salary received from World Playhouse Amusement Co.	
(b) Other income	$59,749.72
To report gambling and other income computed on a basis of expenditures made.	

	Jan. 1, 1938	Dec. 31, 1938	Difference
Cash in Vault	$17,000.00		
Cash in pocket	300.00	$1,600.00	
Cash in Bank	2,235.71	9,211.20	
	$19,535.71	$10,811.20	$(8,724.51)

Cash spent

Expenditures in city for purchase and furnishing a new home, expenses, allowance for living, clothes, etc.	46,790.19
Expenditures for country home, purchase, upkeep, furnishing, repairs, and servants	23,484.04
	$61,549.72
Less: Salary received and reported in Item (a)	1,800.00
	$59,749.72
(c) Miscellaneous Income	$58,750.00
To allow amount reported as salaries, commission, etc., adjusted in items (a) and (b).	

SCHEDULE 2.

Year ended 12/31/1938

COMPUTATION OF TAX — 1938 ACT

Individual

1.	Net income (from Schedule 1)		$62,546.72
2.	Less: Personal exemption	$ 2,500.00	
	Credit for dependents	1,200.00	3,700.00
4.	Balance (surtax net income)		$58,846.72
6.	Less: Earned income credit		300.00
7.	Balance subject to normal tax		$58,546.72
8.	Normal tax at 4 percent	$ 2,341.87	
9.	Surtax on item 4	10,556.35	
13.	Total tax assessable		$12,898.22
14.	Tax previously assessed		11,806.33
15.	Additional tax to be assessed		$ 1,091.89

In re: Paul DeLucia

SCHEDULE 3.

Year ended 12/31/1939

ADJUSTMENT TO NET INCOME

Net income as disclosed by return		$70,609.31
As corrected		75,819.28
Net adjustment as computed below		$ 5,209.97
Unallowable deductions and additional income:		
(a) Salary	$ 1,000.00	
(b) Net long-term capital loss	36.70	
(c) Dividends	187.50	
(d) Other income	78,043.94	
Total—		$79,268.14
Nontaxable income and additional deductions:		
(e) Miscellaneous income	$74,068.17	
Total—		$74,068.17
Net adjustment as above		$ 5,209.97

SCHEDULE 3-A.

Year ended 12/31/1939

EXPLANATION OF ITEMS

(a) Salary $ 1,000.00

To report salary received from World Playhouse Amusement Co.

(b) Net long-term capital loss,

Deducted	$ 3,448.86
Corrected	3,412.16
Decrease	$ 36.70

To correct capital lose on sale of Transamerica Corporation stock:

Date Purchased	Date Sold	No. of Shares	Cost	Selling Price	Loss
10/15/1937	4/17/1939	200	$2,625.00	$1,144.08	$1,480.92
9/ 9/1937	4/17/1939	200	3,025.00	1,144.08	1,880.92
5/11/1937	4/17/1939	200	2,900.48	1,144.08	1,756.40
			$8,550.48	$3,432.24	$5,118.24

Long-term loss limited to 66-2/3%—
Seetion 117 (b) $3,412.16

(e) Dividends $ 187.50

To report dividends received from Transamerica Corporation.

(d) Other Income $ 78,043.94

To report gambling and other income computed on a basis of expenditures:

	Jan. 1, 1939	Dec. 31, 1939	Difference
Cash in Vault		$15,900.00	
Cash in Pocket	$ 1,600.00	700.00	
Cash in Bank	9,211,20	1,588.93	
U. S. Steel purchased		3,972.21	
	$10,811.20	$22,163.14	$ 11,350.94

Expenditures in City for home improvements, living expenses and other personal expenditures 76,709.52

Expenditures for country home; improvements, expenses upkeep, and all other personal expenditures 24,603.22

$112,663.68

Less:		
Mortgage placed on home	$30,000.00	
Salary adjusted in item (a)	1,000.00	
Dividends received and reported in Item (c)	187.50	
Monies received on sale of TransAmerica Stock	3,432.24	
		34,619.74
		$ 78,043.94
(e) Miscellaneous income		$ 74,058.17

To allow amount reported. This item was included in adjustments (a), (c), and (d) of this report.

SCHEDULE 4.

Year ended 12/31/1939

COMPUTATION OF TAX

Individual

1.	Net income (from Schedule 3)		$75,819.28
2.	Less: Personal exemption	$ 2,500.00	
3.	Credit for dependents	1,200.00	3,700.00
4.	Balance (surtax net income)		$72,119.28
6.	Less: Earned Income Credit		300.00
7.	Balance subject to normal tax		$71,819.28
	(amount brought forward)		$71,819.28
8.	Normal tax at 4 percent	$ 2,872.77	
9.	Surtax on item 4	15,771.29	
10.	(a) Total tax (item 8 plus item 9), or		$18,644.06
	(b) Total tax (alternative tax in case of a term gain or loss) (from Schedule 5)		$19,285.39
13.	Total tax assessable		$19,285.39
14.	Tax previously assessed		$16,893.68
15.	Additional tax to be assessed		$ 2,491.71

SCHEDULE 5.

Year ended 12/31/1939

COMPUTATION OF ALTERNATIVE TAX—I.R.C.

Individual

1.	Net income (from Schedule 3)		$75,819.28
	Plus: Net long-term loss		3,412.16
	Ordinary net income		$79,231.44
2.	Less: Personal exemption	$ 2,500.00	
3.	Credit for dependents	1,200.00	
			3,700.00
4.	Balance (surtax net income)		$75,531.44
6.	Less: Earned income credit		300.00
7.	Balance subject to normal tax		$75,231.44
8.	Normal tax at 4 percent	$ 3,009.26	
9.	Surtax on item 4	17,299.78	
10.	Partial tax		$20,309.04
	Minus: 30% of net long-term loss		1,023.65
11.	Alternative tax (to Schedule 4)		$19,285.39

589 By Mr. Barnett:

Q. Mr. Klein, I have given you Government Exhibit No. 62, your report, and I hand you Government Exhibit No. 11, the 1938 return, and Government Exhibit No. 12, the 1939 return of Paul DeLucia.

Mr. Klein, by refreshing your recollection from the report, will you tell us what cash on hand was disclosed by Mr. DeLucia's books for the beginning of the calendar year 1938?

A. He showed a total of $19,535.71. It was divided into cash in vault, $17,000; cash in pocket, $300; cash in bank, $2,235.71.

Q. Will you tell us what the cash on hand recorded in the books at the end of the calendar year 1938 was?

A. A total of $10,811.20, consisting of no cash in the vault; cash in the pocket, $1,600; cash in bank, $9,211.20.

Q. That gives a difference of what?

A. It gives a decrease in cash of $8,724.51.

Q. Did you compute the expenditures in that year?

A. I did.

Q. How did you compute them?

590 A. I have here expenditures in city for purchase and furnishing a new home expenses, allowance for living, clothes, and so forth, $46,790.19.

Expenditures for country home, purchase, upkeep, furnishing, repairs and servants, $23,484.04.

Q. Did you make an adjustment to Mr. DeLucia's 1938 income tax return as a result of that audit?

A. I did.

Q. What did that adjustment consist of?

A. It consisted, the amount was $2,799.72.

Q. And what was that?

A. It consisted of an adjustment of the figures of the disbursements based in the same manner in which the original return was computed.

Q. Did you increase or decrease the income?

A. I increased the income.

Q. By $2,000?

A. $2,799.72.

Q. Did you have any conversation with Mr. DeLucia during this conference concerning household living expenses?

A. Well, I notice one thing in my report. I must have, because I have noted in the report that amongst his
591 home expenses was an amount of $150 a week he had given to his wife.

Q. You have before you also the 1939 return, which is Government Exhibit No. 12.

Incidentally, Mr. Klein, I neglected to ask you on the 1938 return, you increased the miscellaneous income by $2,000-something, but you didn't tell us from what and to what you increased it.

A. Well, there was reported as miscellaneous income on the 1938 return an amount of $56,950.

Q. You increased that to what?

A. I increased that to $59,749.72.

Q. All right.

Now with respect to the year 1939, will you tell us from your report what Mr. DeLucia's books showed was his opening cash on hand for the calendar year 1939?

A. His opening balance on hand for 1939 would be the same as the closing balance in 1938.

Q. And that was what?

A. No cash in vault, $1,600 cash in pocket, and $9,211.20 cash in bank, a total of $10,811.20.

592 Q. And what did his books reflect as the closing cash for the year 1939?

A. As of December 31st, 1939, the books reflected cash in vault of $15,900.00; cash in pocket, $700.00; cash in bank, $1,588.93, and then, an item of United States Steel purchased, of $3,973.21, making a total of $22,162.14.

Q. Will you give us the difference between the opening cash and the closing cash?

A. The difference between the opening cash and the closing cash was an increase of $11,350.94.

Q. What did you note were the expenditures listed in the book for the year 1939?

A. This would be corrected.

Q. This would be your tallies of the expenditures shown in the book, is that correct?

A. As corrected, yes. Expenditures on city home improvements, living expenses and other personal expenditures, $76,709.52; expenditures for country home improvements, expenses, upkeep and all other personal expenditures, $24,603.22.

Q. Now, did those figures include the household expense of $150.00 a week that you alluded to previously?

593 A. Yes, they do.

Q. That is buried in those figures?

A. That is right.

Q. Now, what other notations were on the book concerning non-taxable income for that year, Mr. Klein?

A. Well, for 1939, Mr. DeLucia had placed a mortgage on his home for $30,000.00. And then, we adjusted for a thousand dollars in salary that he showed separately on his report, and the money he received on a sale of Transamerica stock which he had purchased in a prior year.

Q. Were these items noted in this book?

A. That is the only place I could get them from.

Q. They were noted in the book?

A. They were noted in the book.

Q. How did he treat the $30,000.00 mortgage on his house, in so far as his book is concerned?

A. Well, in making those computations—

Q. No. Just tell us what Mr. DeLucia did, if you will, please.

A. Well, when he arrived at his income on the basis
594 of those books, he reduced the income by this $30,000.00.

Q. In other words, he treated that as available cash, from a non-taxable source, is that right?

A. That is right.

Q. Did he do the same thing with the salary adjustment of a thousand dollars?

A. That is right.

Q. That was because it was reported elsewhere specifically in the return?

A. Pardon me. I got that wrong. He didn't make any adjustment for the salary because his book reflected salary in everything and he just broke it down on the return.

Q. I see. Well, as a result, then, of your audit, Mr. Klein, what adjustments, if any, did you make to the 1939 income reflected on his 1939 return?

A. I increased his income $5,209.97.

Q. And what was the cause of that increase?

A. Well, the cause of that was a small amount of difference in reporting of a capital loss on a sale of that Transamerica Corporation and the bal[illegible] was due to duplications of items of disbursemen[illegible]n this book and, oh, errors in computations.

595 Q. The small amount of the capital loss on the sale which you referred to was less than $100?

A. That is right.

Q. What was the miscellaneous income reported on the 1939 return?

A. The miscellaneous income reported was $73,058.17.

Q. And your adjustment increases that to what figure?

A. $78,043.94.

Q. Mr. Klein, did you have any discussion with Mr. DeLucia with respect to the reporting of his income in years prior to 1938?

A. I did.

Q. What was that discussion?

A. The discussion simply was a question asking him if this was the way he always computed his income and he said he consistently computed his income on that basis.

Q. Was there any source of income shown on the book itself when he presented it to you?

A. There was no source of income whatsoever, with the exception of capital gains, something like that.

Q. I see.

596 The source of the expenditures was not shown on his books?

A. The names of all the expenditures was shown on the books.

Q. That is the place where the money went?

A. No. It did show to whom he paid it.

Q. It showed to whom he paid it?

A. Yes, sir.

Q. There were no names of people from whom he received money?

A. That is right.

Cross Examination.

By Mr. Stewart:

Q. Mr. Klein, as I understand it, you went over the records that Mr. DeLucia brought in and audited his returns which you had before you and you came to the conclusion that for various reasons, which you stated here, he owed the Government more money than he had paid, is that right?

A. That is right.

Q. Did you figure out right while he was there how much more he owed, according to your figures?

A. I did.

Q. Did you tell him what it was?

A. I did.

Q. Did he pay it?

A. He signed a Form H-70, agreeing to pay it.

Q. And that is the end of the matter, isn't it?

A. That is right.

Q. You, as an agent, have the authority to make those arrangements with the taxpayer, isn't that right?

A. That is right.

Q. Were you in authority to make that arrangement and make that settlement with him without consulting with any superior?

A. That is right. It is with the approval of the Review Section and—the Post Review Section.

Q. But you didn't stop your conference to go and consult anybody else, did you?

A. No, I did not.

Q. And these adjustments you made were relatively small, compared with his income and his tax, isn't that right?

A. That is right.

Q. So, you felt that you were within the power that is given to you by your office to just make the settlement right on the spot?

A. That is right.

Q. Now, the books and records that he brought in there, I suppose you just gave them back to him?

A. That is right.

Q. And when he told you that that is his method and it had been his method in previous years, you didn't raise any objection to that method, did you?

A. You couldn't raise any objection to that method.

Q. As a matter of fact, you had seen that method adopted by other people who had income which they just preferred to put under the general heading of "Miscellaneous," isn't that right?

A. That is right.

Q. And the Government took the position that so long as the Government got its money, it didn't care where the taxpayer got it from?

A. Well, we always did ask the source.

Q. But you didn't always get the information?

600 A. No, we did not get the information.

Q. And, if you didn't get the information, you would go ahead and compute the tax as best you could from what information you had?

A. That is right.

Q. How long were you around Chicago making these investigations on behalf of the revenue people?

A. Since 1935.

Q. Did you have a kind of a special assignment? Were you the fellow that was assigned to bookkeeping establishments and so forth?

A. That is right.

Q. So, you had more or less of an expert knowledge of that line of work?

A. I considered it so.

Q. And it wasn't unusual to find somebody that was engaged in business as a gambler to have what he called a bank roll, isn't that right?

A. That is right.

Q. That was a fund of money which he used in the operation of his business, isn't that right?

A. Correct.

Q. Now, at the time that you had Mr. DeLucia in
601 there and were questioning him, that was just a routine checkup, wasn't it?

A. That is right.

Q. And you didn't have any stenographer present?

A. No.

Q. Your only interest was to determine what amount of income he might have had during those years that you were questioning him about and whether or not he paid a sufficient tax on that income, isn't that right?

A. That is right.

Q. You didn't ask him for a detailed financial statement, did you?

A. No.

Q. And you weren't concerned with how much he might have owned outside of income producing property, were you?

A. No. I was not interested in that.

Q. You weren't making any inquiry about that?

A. That is right.

By Mr. Stewart: That's all.

Redirect Examination.

By Mr. Barnett:

Q. Mr. Klein, on the question of determining a
602 man's income on the expenditure basis, it is necessary to know his total opening and closing cash, is it not, as well as his expenditures?

A. That is right. That is very important. In this whole income, it is guided by the opening and closing cash.

603 FREDERICK ARMSTRONG, testified as follows:

Direct Examination.

By Mr. Barnett:

* * *

604 Q. How long were you an Internal Revenue Agent?

A. From January of 1946 until February of 1948.

Q. Were you assigned to the Chicago office?

A. I was.

Q. During the course of your duties as an Internal Revenue Agent, did there come a time when you audited the returns of Mr. Paul DeLucia?

A. Yes.

Q. Can you recall approximately when that was?

A. It was late in 1946, October, November, December.

Q. And for what year's tax liability did you audit?

A. 1942 and 1943.

Q. Were the returns assigned to you as a routine matter?

A. Yes, they were.

Q. Were those two returns for 1942 and 1943?

A. Yes.

605 Q. After receiving the returns for audit, what did you do? What was the first thing you did in your investigation?

A. Well, I began my investigation by going to the address indicated by the return, in River Forest, his home.

And, the doorbell was answered by a woman who I believe was Mrs. DeLucia. I asked for Paul DeLucia, was told he wasn't at home. And then, I explained who I was and showed my credential, and that I had his income tax for the years 1942 and 1943 for examination.

So, she asked me to wait a minute and she left the room. She came back later and sent me to see Eugene Bernstein, his attorney.

Q. After leaving the residence, then did you go to the office of Mr. Eugene Bernstein?

A. I did.

Q. On the same day?

A. Yes.

Q. Did you have a conversation with Mr. Bernstein at that time?

A. Yes.

Q. In his office?

606 A. Yes.

Q. Was anybody else present?

A. A secretary, I believe, a Miss Cox, was there.

Q. Will you tell us as nearly as you can recall what your conversation with Mr. Bernstein was?

A. Well, I explained to him who I was and that I wanted to make an examination of Mr. DeLucia's tax returns for 1941 and 1942 and he then furnished me with a file folder containing some work sheets and miscellaneous memoranda, invoices, and also the bank statements and some canceled checks for these periods, 1942 and 1943.

He represented to me that these were the basis upon which the income reported on these two returns had been determined. The returns simply indicated "Miscellaneous income" of rather large amounts, sixty-nine thousand in, I think, 1942, and upwards of seventy thousand in 1943, and that from these work sheets, by taking the end balance—these are the returns (indicating).

Q. I have handed you the income tax returns for 1942 and 1943, Mr. Armstrong. Those are Exhibit numbers what?

A. 15 and 16.

607 Q. Will you read the miscellaneous income shown on 1942 return to us, please?

A. $72,503.52.

Q. Will you read the miscellaneous income shown on the 1943 return to us, please?

A. This one doesn't appear to be labeled miscellaneous, but it is on line 9, which is income or loss from partnerships, fiduciary income and other income. It is $80,375.00.

Q. Mr. Bernstein gave you some work sheets, accountant's work sheets, were they?

A. Yes, the fourteen column work paper accountants regularly use.

Q. Did you have any discussion with him about the method used in reporting income?

A. I did.

Q. What was that discussion?

A. Well, he explained to me that the theory upon which this income was arrived at was that the balances in the bank account at the end of the year, plus what cash Mr. DeLucia had on his person, plus the expenditures that
608 were made during the year and minus the cash and beginning bank balances would represent income. That he recognized that as income.

Q. Does that have a name, that method of reporting income?

A. Well, it is a sort of a cash receipts and disbursements method, but as I pointed out to him, along with it should go a review of the person's assets as if there is any increase in assets not accounted for by expenditures, it would have an effect upon income.

He assured me that during these years there was no change in Mr. DeLucia's assets, that the cash was his only asset. The farm and home were Mr. DeLucia's, so that on that basis I was to proceed to accept the disbursements as the key to the income, as adjusted by the beginning and ending cash.

609 Q. What further transpired in that conversation with Mr. Bernstein?

A. Well, I was then given a desk at which to work in his office, and I spent a day or two there going through these work sheets and the checks and invoices supporting them. In doing this, I discovered some errors, errors and omissions in the form of the computation that would have some increased and others decreased income on this basis and, oh, roughly, they were in the neighborhood of $6,000.00 or $7,000.00 upwards.

Then I asked him about the fact that Mr. DeLucia had been tried in 1943 on that movie extortion case, and that I found nothing in the list of expenditures to indicate what had been paid his defense attorneys. Mr. Bernstein said, well, no, that is not involved, that the syndicate has paid for those attorneys' fees.

I explained to him that, well, if the syndicate had paid them for him, as far as I was concerned, it would still constitute income as it must have been paid for him for some service he rendered.

610 He did agree that that would be proper, but I told him that I was going to proceed on that basis and I then contacted an attorney, I believe his name was—

611 Q. Will you complete the conversation for us before you go on to another subject?

A. Well, that completed it then. Then he would not agree that that was the proper adjustment, and of course, I left for that day. I wasn't through with the case, but that ended the conversation at that time.

Q. Before we leave that subject, were there figures with respect to cash on hand entered in these work papers that you examined?

A. Yes.

Q. Do you recall what those figures were and for what period they were shown?

A. Well, there was a cash figure for the beginning of each year and the end of each year.

Q. What was it for the beginning of 1942?

A. I don't recall what the amounts were, but to my best recollection, they were very insignificant amounts, $100, or at most $200.

612 Q. There was no sum larger than that at the end of either year, is that correct?

A. That is the cash on his person, but of course, the bank balances were greater than that, although I don't recall the amount.

Q. But the cash on hand—

A. The cash on his person were these very nominal figures, yes.

Q. Was there any other cash shown on the books?

A. No, just the two, the cash on his person and the cash in the bank account, which I was examining.

Q. Will you continue with what happened after this first conversation with Mr. Bernstein?

A. Well, I then made some outside investigations on a couple of items. There was some interest involved, as I recall, and I checked with some mortgage company.

Then I went to see this attorney who had defended him. His name is—I don't know whether it is Eben Bradley, or Bradley Eben—but I learned from him that he had represented Mr. DeLucia as one of the defendants, but that he had represented many more. There were five or 613 six involved in the case, and—

Q. No, you shouldn't tell us what conversation you had with Mr. Eben, Mr. Armstrong.

If you will just tell us what you did, and then the conversation you had with Mr. Bernstein.

A. Well, I learned outside that there was about $7,500 of attorney's fees that I could definitely ascribe to Mr. DeLucias' defense, and I proposed that as one of the adjustments that I would make.

Q. Did you go back and have a conversation with Mr. Bernstein about it?

A. Yes, I did.

Q. Approximately when would that conversation have taken place?

A. Oh, that would have been somewhere in December or January, December of 1946 or January of 1947.

Q. You have already related that discussion, have you not?

A. Yes. Well, I don't recall whether that was the second day, but sometime after that I had a discussion with him summarizing the things that I had worked
614 up and that I had some more work to do on the outside.

Well, a few weeks or perhaps a month elapsed, and one day I had a telephone call at the office from Mr. Bernstein, and he asked me where I stood on the case.

I told him, well, I had these adjustments that totaled around $16,000 or $18,000 of additional income, and that I proposed to close the case on that book, whether or not he would agree.

Of course, he was not in agreement on this matter of the attorney's fees for one thing. So he said, well, he wanted to see me, so I went to his office and he produced for me a check or two checks, photostatic copies of these checks, that combined totaled the exact amount of the deposit that had been made to this bank account with which I was working as the disbursements, as the account from which these disbursements were being made.

He showed me that those two checks were paid to Mr. DeLucia by an insurance company as a settlement for a fire loss on his summer home somewhere in Indiana. Well, obviously, these—

615 Q. Just tell us what was said, Mr. Armstrong.

A. Well, he pointed out that these insurance settlements would not constitute taxable income, with which I agreed, and that he proposed, inasmuch as deposited in this account which covered some of these disbursements was this amount of insurance settlement that the income had thus been overstated, and that he proposed to file a claim, which he did.

He filed a claim for, oh, there were some $20,000.00 of erroneously reported income involved, which I think would effect a tax of about $11,000.00. So he filed that claim. Well, that erroneously—

Q. May I interrupt you for a moment. Is Government Exhibit No. 23, which I hand you, the claim which was filed by Mr. Bernstein?

A. Yes, that is the claim. Well, this unreported income exceeded the adjustments that I proposed so—

Q. What unreported income was that?

A. This amount of the insurance claims, payments.

Q. You say that was unreported?

A. Did I say unreported?

616 Q. That is what I understood you to say.

A. I meant improperly reported income. That it was included in the income determination erroneously. That it should not have entered into the determination and with it in there, the income was overstated, if you will accept this method as proper.

Q. All right. Will you stop for a minute now. Is it possible to find out from the face of the 1943 return itself whether or not that $20,000.00 is included on the return?

A. On the face? No.

Q. What possible item could it be included in?

A. Well, it would be included in Item 9, the $80,000.00 figure that is the other income.

Q. But that is not otherwise broken down on the return?

A. No.

Q. All right. From these papers that Mr. Bernstein showed you, was this $20,000.00 listed as an item of receipt on the papers?

A. No, the papers didn't have receipts. The receipts were listed in the bank account. They were simply the recorded deposits to the account.

617 Q. I see. So how could you tell whether or not the $20,000.00 was included in the income reported on the return?

A. Well, since this account, this bank account is entering into the determination, the cash involved, obviously a deposit to that account which is not income would affect the determination of income and should be excluded from the determination.

Q. Did you have any conversation with Mr. Bernstein about the source of the taxpayer's income?

A. I asked him what the source was.

Q. What did he tell you, if anything?

A. He told me he couldn't tell me.

Q. Are those the words he used?

A. To my recollection.

618 Q. Let me ask you another question.

Concerning the examination of the documents which Mr. Bernstein made available to you, that is to say, the accountant's work papers, you also at the same time were examining Mr. DeLucia's bank records, were you not?

A. The bank statements.

Q. The bank statements?

A. Yes, and some canceled checks.

Q. Was there any relation between the activity of the bank account with the expenditures that were disclosed by Mr. Bernstein's work papers?

A. Well, some of the expenditures were being made by check against this account.

Q. Were the great majority of the expenditures made by check against the account?

A. I would say the majority were, but cash expenditures were considered as well. There were items of expenditures that weren't covered by checks that were coming from cash from some source.

Q. Mr. Armstrong, did you make a report as a result of this investigation that you made?

A. Yes, I did.

619 Q. And in that report did you analyze the adjustments, or, rather, did you make a report of your analysis of Mr. Bernstein's work papers and the bank accounts?

A. Not a complete report. Inasmuch as the report took the form that I was recommending that the claim be denied and that the income as reported be accepted, I wrote a statement of the various types of possible adjustments that I had encountered and pointed out that they were more than offset by the insurance settlement, so that I recommended no adjustment be made.

Q. Is Government Exhibit No. 63 your report?

A. Well, this is the typed copy of the handwritten report that I submitted.

624 Q. Mr. Armstrong, on page 2 of your report are a series of figures with a description of what the figures represent.

625 Will you tell us from what source you obtained the information that is printed in page 2 of your report?

A. These were taken from invoices and memoranda which were handed to me, together with these work sheets that were used in the computation of income.

626 Q. They were handed to you by whom?

A. Mr. Bernstein.

Q. And you saw these documents in Mr. Bernstein's office, did you?

A. Yes.

Q. Were these part of the papers that Mr. Bernstein made available to you in order to audit Mr. DeLucia's tax returns for 1942 and 1943?

A. They were.

Q. There is an item on here, Mr. Armstrong, entitled "Farm expenses," 1943, in the year 1943, in the amount of $907.41.

Will you explain to us the meaning of that item, please?

A. Well, there were included some invoices for some materials bought for the farm, which had not been listed in the disbursement used in determining income, but the invoices were evidence that these expenditures had been made.

Q. And you taking cognizance of that item in your report indicates what?

627 A. It indicates that there were greater expenditures then were listed, and, therefore, greater income.

Q. And so you are increasing the income by that amount, are you?

A. I actually made no adjustment. These would have been increases to income, had I adjusted income.

Q. I see. But, you did not adjust the income because of the offsetting fire loss?

A. That is correct.

628 Q. Now on page 4 of your report, Mr. Armstrong, you have an item entitled "Repairs not included in income computation," and the amount is $4,304.68.

Will you explain that item to us, please?

A. These again were for invoices for work done in repairing the fire damage to the summer home in Indiana. They had not been included in the listed expenditures, and if I had adjusted income, I would have added them to the income. However, they again were offset by the loss paid by the insurance company.

Q. Were there any losses paid directly by the insurance company?

A. That I don't know. The only loss payments that I saw were the photostatic copies of the checks that were deposited in the account, and they were made payable, as I recall, to Mr. DeLucia.

Q. Well, at the time that you were examining these invoices and you arrived at that $4,300.00 figure, that is the difference between the figures, is it not?

A. These were actually expenditures which were not listed in the listed expenditures for the determination 629 of income.

Q. Mr. Armstrong, according to the documents which you saw in Mr. Bernstein's possession, did you see figures which showed year end and beginning bank balances?

A. Yes, I had the bank statements.

Q. Will you tell us as nearly as you can recall what the bank balances were at the beginning of 1942?

A. Approximately $2,000.00.

Q. And at the end of 1942 or the beginning of 1943?

A. I don't recall what the interim balances were. At the end of 1943, the last year I examined, they were again about $2,000.00.

Q. So there was very little change in the bank balances at the year end?

A. Over the two year period there was very little change.

Q. You said yesterday that the sheet also disclosed personal cash outside of banks, is that correct?

A. That is correct.

Q. And at the close of 1943, how much personal 630 cash outside of banks was disclosed on the work sheets?

A. They were very nominal amounts, $200.00 or less. I don't recall exactly.

Q. Did you have a conversation with Mr. Bernstein concerning any other cash?

A. Yes.

Q. What was the conversation?

A. Well, I asked him if this was all the cash involved that Mr. DeLucia had, and he said it was.

Q. Now you referred to Mr. DeLucia's method of reporting income as to the cash receipts and disbursements basis, if I recall correctly?

A. Yes.

631 Q. Is that an accountant's terminology for an expenditure method of reporting income?

A. Well, yes. If you assume there is no change in a person's assets and you are able to determine what his expenditures are, obviously the money to make those expenditures must have come from some form of income.

Q. But is it necessary for you, in order to correctly reflect such income on that method, is it necessary for you to know the opening and closing cash, at beginning and end of the year?

A. Yes, it is.

Q. Do you have to know the total amounts?

A. Yes.

Q. Mr. DeLucia reported on his income tax returns, if I recall correctly, for the years 1942 and 1943 sums of $70,000 and $80,000. With this method of reporting, is it possible for him to have saved any of that money that was reported on those returns?

By Mr. Stewart: Just a moment. I object to that.

By Mr. Barnett: I will withdraw the question, 632 your Honor.

By Mr. Barnett:

Q. What is the significance with respect to income of the expenditures made by a person reporting income on this basis?

A. That the expenditures are equal to the income.

Q. In other words, nothing is retained out of the expenditures?

A. Other than the variations in the cash.

Cross Examination.

By Mr. Stewart:

Q. How long were you with the Government, in the Government service, Mr. Armstrong?

A. Just a little more than two years.

Q. When did you begin and when did you finish?

633 A. I began in January of 1946 and left in February of 1948.

Q. Do you remember when the job was assigned to you to look into the returns you have been testifying about?

A. The case was assigned to me October 9 of 1946.

Q. So you had it and did some work on it from that date up to the date of your report, which is May 29, 1947, isn't that right?

A. That is right.

Q. I am going to ask you some questions about your report. I have handed you the photostatic copy because I find the original a little easier to read.

I call your attention to the covering letter—I believe that is the term you use for it. I will show you the original.

I am now directing your attention to Government Exhibit 63, being your report. Is that first page what is called a "covering letter"?

A. I believe it is.

Q. You will notice when I call your attention to it that it is a printed form, isn't it?

634 A. It seems to be, yes.

Q. I take it that during the two years you were with the Government service you had to do with a number of those letters?

A. Well, actually I wouldn't as an agent have much to do with those letters. Those letters are sent out from the Bureau by others after I have submitted my report.

Q. Well, I would like to have you tell the jury, because you are the first one that has been asked about this particular office procedure. It is partly covered by regulations, is it not?

A. Yes.

Q. I notice that the substance of this letter, which is directed to Mr. Paul DeLucia, United States Penitentiary, Leavenworth, Kansas, and dated September 30, 1947, the substances of that is that the Revenue agent in charge has come to the conclusion that the claim for a refund, that the investigation discloses that no grounds for reduction of your tax liability exists, and the substance of it is that the taxpayer is informed that he can either con-
635 sent to the finding or he might protest it within 30 days, isn't that right?

A. That is right.

636 Q. And then you follow up and you can look on your report that you have, the pages that are there, and on the last page I believe you will find a rubber stamp, or it is as if somebody put it in the typewriter and added "Held 30 days. No protest filed."

A. Yes.

Q. Would that be an office record?

A. Yes, it would.

Q. And that would indicate that that is what happened in that particular instance?

A. Yes.

Q. Now, I notice the printed form states that the covering letter is sending to the taxpayer as an enclosure, a report of examination.

That means your report as a revenue agent, isn't that true?

A. Where is it, Mr. Stewart?

Q. On the covering letter, down at the corner, the left. That is part of the printed form, is it not?

A. Yes.

Q. "Enclosures. Report of examination."

A. Yes.

637 Q. That is right?

A. That is what it says.

Q. So that means to you that a copy of your report was sent to the taxpayer?

A. Well, it would appear that it does. I don't know whether it would mean that to me or not. I wasn't with the Bureau very long and I wasn't too familiar with these procedures.

Q. Well, would you say, from examining the exhibit that you have in your hand there, that your report was sent along with a covering letter to Mr. DeLucia who at that time was in the penitentiary at Leavenworth, Kansas?

A. Yes, it indicates that it was.

Q. Now, I notice that the difference in timing between your report of May 29, 1947, to the time that the letter was sent out to Mr. DeLucia, was on September 30, 1947. It was that lapse of time, wasn't it?

A. Yes.

Q. If I am correctly informed, Mr. Armstrong, that time is taken up with office routine. That is, in the first place, your report goes to somebody superior to you, isn't that right?

638 A. To the Review Section, yes.

Q. And if they find some objection to it and they don't want to take it the way you have drawn it up, they send it back to you, isn't that right?

A. Yes.

Q. That happens in the office before it goes out?

A. Yes.

Q. But, this report was not sent back to you, was it?

A. No, it was not.

Q. So, the fact that it was sent out, indicates approval was had by your superiors of the Review Department of your report?

A. Yes.

Q. And, so far as you know and so far as you have been able to learn from refreshing your recollection with the report, the recommendations made by you were followed by your superiors and by the department?

A. Yes.

639 Q. Now, you say you were assigned the case originally about when?

A. October 9, 1946.

Q. How long after you were assigned the case did you go out to Mr. DeLucia's home?

A. I couldn't give you the exact date. It would be within a month thereafter.

Q. Well, at that time you knew Mr. DeLucia was in the penitentiary?

A. No, I didn't when I went out there. I did not know who Mr. DeLucia was at all.

Q. Isn't it the custom in the office and wasn't it the custom when you were there, to have the people about the office give the agent previous reports for his examination?

Did you have in your possession or did you have an opportunity to examine previous agent's reports at the time this case was given to you?

A. No, sir.

Q. As you sit there now, have you examined the reports made by Agent Ruggaber?

A. I read some prior reports in the file section at the Bureau after I went to Mr. Bernstein's offices. I don't
640 recall just whose reports they were, but I read the prior reports.

Q. Now, how long after you saw Mrs. DeLucia out at her home was it that you saw Mr. Bernstein?

A. Well, I think I went right downtown and saw Mr. Bernstein that same day.

Q. Now, you learned from your investigation, from your conversations with Mr. Bernstein, that he had not prepared these returns you were investigating of 1942 and 1943? You learned that, didn't you?

A. I don't know who prepared them.

Q. Didn't you learn that Mr. Bernstein was rather new to the case, the same as you were at that time?

A. I don't recall that.

Q. Now, I am going to take you through the report, Mr. Armstrong, and you have the photosatic copy there, and one thing I have in mind—you see, I am interested in what you say and also in what you do not say and I am going to ask you when we get through going through it: You don't say anything in your report about the amount of cash on hand at the beginning of the period and the amount
641 of cash on hand at the end.

You don't say that in the report, if I have read it correctly.

Maybe after we go through it I will ask you the question again.

A. Yes.

Q. But, I want to get the general substance of your activity and you correct me if I have misstated it, now, but, as I understand it, you went to Mr. Bernstein because you had been referred to him and you informed Mr. Bernstein that you were making an investigation concerning these two years, isn't that right?

A. That is right.

Q. And then, after you talked with Mr. Bernstein for a while, a claim was made later through the regular channels for something with reference to a fire loss, isn't that right?

A. That is right.

642 Q. Now, I can give you the date of that. I believe it is in your report, so we can make sure we are getting our dates right, or our approximate time.

Your report, on page 1, states:

"A timely claim was filed on or about January 28, 1947 for refund of tax paid in 1943 in amount of $11,548.57, based on an alleged overstatement of net income resulting from the inclusion of the proceeds of an insurance loss settlement in gross income."

That is accurate, isn't it? That is in your report?

A. Yes, sir.

Q. And that is your understanding, that this claim for refund was filed on behalf of the taxpayer by Mr. Bernstein on January 28, 1947?

A. Yes.

Q. That was after you had talked to Mr. Bernstein for a while first, back in the time when you were first assigned to the case?

A. Yes, it was.

643 Q. Was it after you had examined some papers that were submitted to you by Mr. Bernstein?

A. Yes, it was.

Q. The net result of your investigation, which is incorporated in your report, if I understand correctly, is that you recommended to your superiors that this claim based on the fire insurance loss—that that should be rejected, isn't that right?

A. Yes.

Q. And you gave reasons for that, didn't you?

A. Yes.

Q. And, in general, the reasons were that you found inaccuracies in the report, the return, based upon the data that Mr. Bernstein showed you, isn't that right?

A. That is right.

Q. And also, another reason you had which you state in your report is that you were not satisfied with the method of bookkeeping employed by the taxpayer, isn't that right?

A. Yes.

Q. Now, you did make an investigation sufficient to inform yourself that there had been a fire loss?

644 A. Yes.

Q. And you had enough information, including the checks that were exhibited to you, to convince you that some insurance company had paid some money for a fire loss?

A. Yes.

Q. Now, I would like to ask you a question as an expert so the jury will understand the situation and, I know as little about it as they do, but, as I understand it, when a man is reporting income, he doesn't have to pay on what an insurance company gives him on a fire loss because that is an injury to his capital assets. Isn't that the way it works out?

A. Yes.

Q. So, if a taxpayer mistakenly reported that sort of a transaction as an income transaction, where he received $20,000.00 from an insurance company, under ordinary circumstances, that would be a mistake that he could ask relief for, by petitioning, as this petition was gotten out, isn't that right?

A. That is right.

Q. And then, it would be up to some agent, such

645 as yourself, to examine into the claim and see what the attitude of the revenue people would be as to that claim, isn't that right?

A. That is right.

Q. Now, you didn't reject or recommend rejection because you thought there was no such loss, did you?

A. No, sir.

Q. You rejected it for the reason which you put out in your report here, isn't that right?

A. Yes.

646 Q. I am going to read this, if you will follow me as I go along, because I might want to stop and ask you to explain things as we go along.

You reported at the top—

It is right after the covering letter.

By Mr. Stewart:

Q. It says:

"Examining Officer, F. S. Armstrong, Jr.,

"Time spent: four days, four hours."

That means that that is the actual time you spent working on this case, is that right?

A. Yes.

Q. That was spread over different days?

A. Yes.

Q. What does that:

"Grade D"

mean?

A. I have forgotten.

647 Q. Chicago, Illinois,

"May 29, 1947."

First you give Paul DeLucia's address out on 812 Lathrop Avenue, River Forest, Illinois, and then:

"Present name and address, if different: Paul DeLucia, United States Penitentiary, Leavenworth, Kansas.

"Internal Revenue Agent in Charge, Chicago, Illinois.

"An examination of the books and records of the above named individual for the year indicated below disclosed the following:

"Summary: Year, 1943, Income tax.

"District in which returns were filed—Over assessment, none. 1st Illinois."

And then you have the date of the returns filed.

648 "Nature of business: Speculator."

Where did you get that information from?

A. From the return, sir.

649 Q. "Authority for Examination: Original returns."

That means that somebody superior to you handed you the original returns, is that true?

A. That is correct.

Q. "Comparison made with: Memoranda and cancelled checks.

"Method elected in deducting bad debts: None claimed.

"Claims (date filed and years covered): On or about January 28, 1947 for year 1943 in the amount of $11,548.57.

"Correspondence from Bureau: None.

"Method of accounting: Cash basis.

"Other information: Taxpayer is serving a ten year sentence in the Federal penitentiary at Leavenworth, Kansas. He was convicted on December 14, 1943 of a charge of extortion in the Federal Court of the Southern District of New York. Taxpayer was not contacted. The examination was made from records in the custody of taxpayer's representative, Eugene Bernstein. These records were found to consist of memoranda of computations of income, bank statements and cancelled checks and some paid invoices."

650 I will pause there. You made no effort to contact the taxpayer, did you?

A. No, sir.

Q. "The income shown on the returns for 1942 and 1943 was computed on a net worth basis, which method has been employed by this taxpayer in prior years."

Let me ask you—I will stop there—how did you know he had done this in prior years?

A. I examined the earlier reports.

Q. The earlier agents' reports.

A. Yes.

Q. And you had made that examination by the time you got around to writing your report on May 29?

A. Yes.

Q. Do you remember now the names of agents' reports which you examined?

A. No, I don't.

Q. I hand you Government Exhibit 55, which we know as Mr. Ruggaber's report, and it is so designated at the top there.

Does that bring it back to your mind that you examined his report?

651 A. Well, it has been a long time. I presume that I did read this if it was available in the file at that time.

Q. This report makes reference to other reports of other agents, including Mr. Klein and also an auditor in the office. Do you remember examining those reports? Do you remember examining a report by an agent named Klein?

A. I believe so.

Q. "The income shown on the returns for 1942 and 1953 was computed on a net worth basis, which method has been employed by this taxpayer in prior years. From the total of the opening bank balance and cash on hand at the beginning of the year, and the itemized expenditures during the year by check and by cash, the remaining balances were deducted at the end of the year to arrive at the income for the year. No record of receipts of income or of the nature or source of income was kept by the taxpayer."

I have correctly read from your report, haven't I?

A. Yes, you have.

652 Q. And that was part of your conclusion?

A. Yes.

Q. Now turning to page one:

Preliminary statement in re Paul DeLucia.

"Index, preliminary statement, one page.

"Examining Officer: F. S. Armstrong, Jr.

"Date of report: May 9, 1947.

"Summary. Year Over-assessment 1943, none.

"Business connection of taxpayer: Speculator.

"Status and reason for all exemptions: Taxpayer was married and living with his wife. He had three dependent children under eighteen years of age."

Did your investigation include a verification of that item?

A. A verification in what way, Mr. Stewart?

Q. Of his exemptions. Did he correctly state them in his return?

653 A. Well, how do you mean did I verify them?

Q. Well, you raised no objection or question or you didn't claim that they were falsely claimed, did you?

A. No, sir.

Q. What inquiry did you make to determine whether or not that was a correct statement?

A. I don't recall, but I presume I asked Mr. Bernstein. There were some bills for tuition and so forth, which was some evidence that there were children involved. I didn't go into asking for birth certificates or anything of the sort.

Q. Reading further:

"State whether or not wife filed separate returns, the exemption claimed and name of spouse,"

and then you say:

"Not known."

Was that your state of mind at the time you wrote the report?

A. Yes.

Q. Well, you could have ascertained that, couldn't you, by examining the other agent's reports and mak-
654 ing a little further examination to determine whether or not?

A. I could have through the Bureau, I presume, found out whether or not she had filed returns.

Q. But you didn't think it of enough importance?

A. No, sir.

Q. Now the next paragraph:

"Information on claim: A timely claim was filed on or about January 28, 1947 for refund of tax paid in 1943 in amount of $11,548.57, based on an alleged overstatement of net income resulting from the inclusion of the proceeds of an insurance loss settlement in gross income. This examination disclosed no conclusive proof of an overstatement of net income. It is accordingly recommended that the aforementioned claim for refund be denied in full."

That was your report, wasn't it?

A. Yes.

Q. Now the next paragraph I am going to ask you to explain, if you will please:

655 "The 1942 tax liability has been discharged by the current Tax Payment Act of 1943."

What should that mean to a jury who is not familiar with your terms?

A. Back in the years, sometime along in 1942 and 1943, the withholding tax went into effect, and in order that they could begin deducting from current income for the next year's taxes, they put through this act, which gave the taxpayer a formula wherein he paid the 1942 tax or the

1943 tax, whichever was higher, I believe, and one year was forgiven in order that there wouldn't be double taxation in the year when the advance payment of tax began.

656 Q. Was there any foregiveness decided on for Mr. DeLucia?

A. Well, I presume that he only paid one of these two taxes.

Q. But you don't know?

A. I don't recall, no. This indicates that it was discharged, that the 1942 was not levied.

Q. I am turning to the next page, if you please:

"An examination and recapitulation of the invoices and cancelled checks evidencing the expenditures for each year was made and disclosed many discrepancies in the taxpayer's figures. These discrepancies in some instances resulted in additions to the resultant income figure, and in others in reductions. An itemization of the discrepancies follows."

That is part of your report, isn't it?

A. Yes, sir.

Q. And that was your conclusion at the time that there were discrepancies, some of them in favor of the taxpayer and some against him?

657 A. Yes, sir.

Q. By the way, in your report you have a discretion, depending upon your investigation, as to whether or not you recommend penalties, don't you?

A. Yes.

Q. And you didn't recommend any penalty in this case, did you?

A. No, sir.

Q. Your conclusion from your examination was that these errors crept in by inadvertence, isn't that right? More or less by mistake?

A. Well, my attitude was that they offset each other and that, roughly, the income from this basis was stated correctly.

Q. Now you go ahead and itemize, and I believe I would like to ask you some questions about how you arrived at these figures.

For 1942, you have set up two columns, and you head it "Effect on income" and on the lefthand side you have the word "Increase," and on the righthand side the word "Decrease."

These figures that are under the Increase mean that
658 your investigation caused you to increase the income of DeLucia for the year 1942 in these amounts, isn't that right?

A. Well, specifically it didn't cause me to increase them. As I said before, if I had made any adjustment to income, these would have been items to increase his income. But I recommended that the return be accepted as filed, and that the claim be denied.

Q. Well, you felt that one would offset the other?

A. Yes.

Q. What I would like to know is how you arrived at the figure, for instance, insurance, $211.00. What was that insurance on?

A. I don't recall. It was an insurance payment that I was able to determine had been made from these memoranda furnished me, which was not however listed in the deailed computation of expenditures that was used to determine the income reported.

Q. When you found something that you disallowed for one reason or another, you put it down in the column marked Increase, is that right?

A. When I found something that I am disallowed?
659 Q. Yes.

A. I found overpayments, for instance, where they reported the payments had been made which hadn't been paid. These 1942 and 1943 income tax payments, for instance, perhaps were not made in the year, made later, or something of the sort. I don't recall exactly just on what I based that conclusion, but at the time with the evidence I had available, this was the effect on income.

660 Q. For 1942 you increased or recommended an increase in insurance, $211, income tax paid, $270.03 and $481.03, is that right?

A. Yes.

Q. Now I will go to the year 1943, and you have 1942 and 1943 income tax payments, and you put that over in the other column headed "Decrease." Is that right?

A. Yes.

Q. And that is $2,281.70. How did you happen to do that?

A. Well, I don't recall exactly. If I had these memoranda made available to me, I could determine just what happened, but a number of things could happen. For instance, the expenditures might have overstated the payments, that the actual payments as determined might have been less than the amount stated in these work sheets, and so—

Q. Whatever the reason was, you found that the taxpayer or whoever helped him draw up that return had cheated himself out of $2,281.70?

A. Not cheated himself, but on the method he was
661 employing he had made an error which had overstated his income.

Q. To that extent?

A. To that extent.

Q. Then you did it the other way, too. You found, for instance, farm expenses, $907.41, which you have in the column headed "Increase." What does that mean?

A. That means that I found evidence of expenditures that had been made which were not listed in the expenditures used to determine his income, and that therefore listing them properly increased his income.

Q. Then the next item I believe will be a little easier to explain, "Victory Bonds purchased, $1,000."

Will you state your reason for putting that in the column headed "Increase"?

A. Among the paper furnished me was a receipt for the purchase of this bond, yet it wasn't listed as one of the expenditures.

Q. And you as an expert on these matters, you know 662 that if a man buys a Liberty Bond or something like that, he increases his capital and he shouldn't charge that up as an expense, isn't that right?

A. Well, it is an expenditure.

Q. But it doesn't belong in this method of keeping income?

A. Yes, it does.

Q. Then why did you deduct from that, for that $1,000?

A. Deduct? I was increasing his income for that.

Q. Oh, that is my error. You found something that he bought and he hadn't claimed credit for it, is that right?

A. I found an expenditure that he had made. By his method of accounting, he admits that as income whatever he spends, and I found here a receipt indicating that he had purchased a bond but he had not included that as an expenditure in the computation of income, and it should have been.

Q. Well, some of those things require a little bit of knowledge, don't they?

A. Yes, they do.

Q. Now the next item, "Home mortgage, $373.80."
663 Do you remember what that was?

A. Well, again, it was an expenditure that wasn't listed.

Q. Then the next item that you have put over in the "Decrease" column, "Real estate, personal property taxes, $157.73 and Fire expense, $97.70." You decided not to allow those items, isn't that right?

A. Not to allow them?

Q. Well, you used them as "Decreases."

A. No, I would say there that I found the figures used had understated—rather, had overstated the amounts of those taxes, and thereby overstated income, so here I was giving him credit for having that understatement and reducing his income.

Q. The next item is "Doctor and hospital bills," and I find that in the column marked "Increase," and it is "$553.38." What does that mean?

A. Expenditures made not included in the expenditures used for the determination of income.

Q. Would that same answer apply to the next item, "Oil, $140.35."?

A. Yes, it would.

664 Q. And "River Forest Insurance, $367.06"?

A. Yes.

Q. The next item is "Flowers, $254.04." Do you remember that item?

A. Only that there was an invoice included for the purchase of some flowers which were not listed as one of the expenditures.

Q. In other words, Mr. Bergin gave you a package of bills and invoices and things, and you checked to see if they were reflected in his work sheets?

A. Yes.

Q. Where you found a bill for flowers or something like that and you didn't find it in the work sheet, you made the proper adjustment in your report?

A. Yes.

Q. There is a "Riding Academy" item. That is the same method used?

A. Same method.

665 Q. Public utilities, it runs up to $974.87. Do you remember that item?

A. Only that it would be of the same nature.

Q. Now, then you have "Personal spending (on basis of amount estimated for 1942) $1,800.00."

The reason you put that in that column is the reason you have just given me; if it is an expenditure, it belongs in this column?

A. Yes.

Q. And then you have "Miscellaneous, $838.66."

I suppose that was a catch-all for a number of small bills?

A. A number of small ones that I didn't itemize.

Q. You total the Increase column, $7,642.84 and you total the Decrease column and make it $2,537.13.

Have I read it correctly?

A. That is correct.

Q. I am going to read further from your report:

"It should be made clear that the foregoing corrections are concerned with taxable income by reason of
666 the fact that they, as expenses of any nature, represent income to the taxpayer because he admits income to the extent of all of his expenditures, as adjusted by net worth variation.

"These items are involved in the gross income determination, therefore, even though they might be allowable from income as deduction, in determining net

income."

When you say a taxpayer admitted something, you never talked to the taxpayer, did you?

A. No. I meant Mr. Bernstein.

Q. You meant Mr. Bernstein?

A. Yes.

Q. And you never questioned whether or not he was accurate or not, did you, when he was talking to you, some things you rejected that he told you, is that right?

A. Yes.

Q. You made up your mind, so far as Mr. Bernstein was concerned, you would believe some parts that he told you and you would disbelieve others, isn't that right?

A. Well, not what he told me. I had actual evi-
667 dence in these files where mistakes had been made in the computations.

The adjustments I made were for obvious errors in the computation.

668 Q. I will come back to that when I come to another portion of your report.

"In addition to the foregoing purely mechanical errors in the computation of the gross income on the basis adopted, other possible adjustments were noted. Such items as household expenses, clothing expenditures, personal expenditures, domestic help, and so forth, made by cash payments were estimated.

"It is the opinion of this agent that the estimates are low."

You gave that as your opinion, did you?

A. Yes.

Q. What do you base your opinion on?

A. Well, that they were quite nominal on the basis of what my own living expenses were. I thought that they were low.

Q. And did you know whether Mr. DeLucia owned his home? Did you know that?

A. Well, I was told that it was in Mrs. DeLucia's
669 name but I know that he had this home and that the family owned it.

Q. There are a great many things to take into consideration before you are entitled to form an opinion as to whether the person's living expenses are high or low, isn't that right?

A. Yes.

Q. And it really didn't matter very much so far as your report is concerned?

A. No, because I wasn't proposing any adjustment.

Q. Furthermore—I am reading further from your report.

"Furthermore, no account of the expenses involved in defending the taxpayer unsuccessfully against the charge of extortion incurred in 1943 was taken into consideration in determining the 1943 net income. Inasmuch as such expenditures represent additional income because met out of income and are not deductible because they represent personal expense, the total of
670 such expenses would represent an additional taxable income."

Let me read that again. I kind of jumbled it up.

It is rather important and I want to ask you some questions about it.

"Furthermore, no account of the expenses involved in defending the taxpayer unsuccessfully against the charge of extortion incurred in 1943 was taken into consideration in determining the 1943 net income. Inasmuch as such expenditures represent additional income because met out of income and are not deductible be-

cause they represent personal expense, the total of such expenses would represent additional taxable income.

"It was ascertained that Attorney A. Bradley Eben was paid $15,000 in cash in 1943 by the six Chicago defendants involved. Mr. Eben did not state who
671 actually made the payment, but, in fact, said he did not recall. He gave the impression that he represented all the defendants but it appears from the enclosed letter from the New York Division that he actually represented only two of the defendants, namely, Paul DeLucia and Charles Gioe. This would indicate that at least $7,500 of attorney fees should be added to the taxable net income for 1943."

I have correctly read your report, haven't I?

A. Yes.

Q. And you told us, in answer to Mr. Barnett's questions what your experience was in running this down. You talked to Mr. Eben, didn't you?

A. Yes.

Q. And Mr. Eben told you substantially the way you put it in your report?

A. Yes.

Q. That he got $15,000 and he represented a group
672 and he doesn't remember just who gave him this money. That is in substance what Mr. Eben told you?

A. Yes, sir.

673 Q. And then you went over and asked Mr. Bernstein what he knew about it and he told you somebody else paid that money and you used the word "syndicate." Do you remember that?

A. I quoted Mr. Bernstein. He used the word "syndicate."

Q. I see. So that your information was that Mr. Eben didn't remember who gave it to him and Mr. Bernstein said somebody else paid it and yet you put in your report that you are going to charge Mr. DeLucia for half of the $15,000.00 as income. That is right, isn't it?

A. Yes.

Q. That is the information you had upon which to make that conclusion, isn't it?

A. Yes.

Q. Well, you realize that your conclusion might not stand up in court if you had to go in and prove it, don't you?

A. Well, it is debatable, but, after all, if someone pays some of your expenses for you, we presume it is either a gift or that it is in payment for something and if it was in payment for services or something of that nature, 674 it would represent income.

Q. You are getting into the field of guessing, aren't you, now?

A. Sure.

Q. Now, the next paragraph:

"In 1943 a summer home in Indiana, title to which was recorded in the name of taxpayer's wife, Nancy DeLucia, was destroyed by fire."

I have correctly read your report, haven't I?

A. Yes.

Q. And you know that that isn't true. I mean, the home wasn't destroyed. You know that was a partial fire loss, don't you?

A. No, I don't know the extent of the loss. After all, this is several years later.

Q. So you put "destroyed by fire" in there without knowing what the facts were?

A. Well, my choice of words was poor, perhaps. There was some destruction. I don't know whether it was total or not.

Q. You didn't expect a lawyer to cross examine you on your oath, isn't that right?

675 A. Yes.

Q. (Reading):

"Cash expenditures of $4,931.18 not included in income determination appeared to exceed the insurance settlement received after deduction of the balance due on a mortgage. When this matter was called to the attention of the taxpayer's representative, Eugene Bernstein, he checked further into the matter and discovered that a net total of $20,730.87 was paid to Nancy DeLucia in settlement of the fire loss, which entire amount was deposited in taxpayer's bank account, considered in the income computation. These facts were proved to this agent's satisfaction by securing photostatic of the checks which in total coincided with a deposit shown on the bank statement for the month of May, 1943. From these circumstances taxpayer's computation of taxable income has taken into consid-

676 eration as taxable income the amount of the insurance recoveries, which is obviously not taxable income. To protect his client Eugene Bernstein prepared a claim for $11,548.57, representing the tax paid on the insurance proceeds of $20,730.87 included in income. This claim was filed on or about January 28, 1947."

Now, if I am able to understand your report, Mr. Armstrong, you were satisfied, from your investigation, that these are the facts, that you have stated in your report?

A. Yes, sir.

Q. And that there was such a fire loss and there was a payment by the insurance company and you know from your experience in handling these matters that the mortgage—the people who owned the mortgage, they take what they have coming to cover their damage and then the property owner gets what is left, is that right?

A. That is right.

677 Q. Now, if a taxpayer put that in erroneously as an income, he would be entitled to a refund if he could get it, isn't that right?

A. Yes, sir.

Q. Now, I am going to read further from your report:

"Other adjustments possible include disallowance of the farm loss claimed in 1942; disallowance of taxes claimed which were actually levied against taxpayer's wife, disallowance of medical, dental, etc., expenses claimed in 1943 but paid in 1942, disallowance of the business loss in 1943 for lack of supporting evidence, and the allowance of $1,800.00 of interest paid in 1942 not claimed as a deduction on the return."

Now that paragraph, I would like to ask you a question or two about. You say:

"Disallowance of taxes claimed which were actually
678 levied against taxpayer's wife."

Now, when you found that Mr. DeLucia claimed that he should get a credit from the Government because of taxes paid on his home, you disallowed it because the home was actually, in the recorder's office, under the name of the wife, isn't that right?

A. Yes.

Q. But, at the same time, your Revenue Agent filed liens against that home and tried to get a transferee tax out of Mrs. DeLucia on the theory that it actually belonged to Paul DeLucia.

You know that, too, don't you?

A. I don't know it, no.

Q. Well, do you think it is fair to take one attitude at one time and another attitude on another time on the part of the Government?

A. Well, I can't say that I always knew what others in the Government were doing. This, after all, was my

report and it was only my attitude that I am responsible for.

Q. Well, now, does it reflect your attitude toward
679 an audit that you would reject a tax paid by a taxpayer on his home where he claimed that as a deduction and you find that the title is in the home of the wife, in the name of the wife? Was it your practice to reject such a claim?

A. I don't know as I ever actually had the question. After all, I say "possible" here. I didn't say I was making these adjustments.

Q. You don't think that would be fair play, do you, to do that, now, as you sit there?

A. I did not make my mind up. I was simply citing other possibilities in adjusting this income.

Q. As a matter of fact, you were looking for defenses to urge on behalf of the Government as against this claim that was being made by Mr. Bernstein, isn't that right?

A. At the point that I was writing this report, I was writing it to deny payment of the claim, yes, sir.

Q. You are not a lawyer, are you?

A. No, sir.

Q. I think we have already proved in this case
680 that lawyers sometimes make a lot of claims they can't prove.

A. You said that.

Q. Did you do that when you were making out your report? You put your best foot forward for the Government; that is right, isn't it?

A. Yes, sir.

Q. "Other adjustments possible include disallowance of the farm loss claimed in 1942."

Disallowance—that is the paragraph I just read.

Do you remember the losses of the farm, what they were, that you disallowed?

A. No, but there I was mentioning the fact at this time that many farm losses were being disallowed from the standpoint that the farms were not being operated for profit but were more of a hobby and, it, therefore represented expenses, living expenses, not deductible.

Q. Did you ever go out to Mr. DeLucia's farm?

A. No, sir.

Q. Do you know anything about it?

A. No, sir.

681 Q. Do you know the size of it?

A. No, sir.

682 Q. Do you know that when he went to the penitentiary, he arranged to rent 1100 acres at seven dollars an acre?

A. I didn't know that.

Q. You didn't know anything about the farm?

A. No, sir.

Q. But you gave yourself the benefit of not knowing about it by saying it might have been one of those hobby farms where you disallowed the expense?

A. I said that it was a possible adjustment; that there was the possibility of investigating further, which I was doing.

Q. Now, you say:

"The net effect of these adjustments and the corrections to the net worth method of income computation previously set forth may be seen from the fol-

683 lowing schedule:"

And then you have a schedule headed "Year 1942" and it is practically a recapitulation of what we have been talking about, isn't it?

A. Yes, although it brings in some of these other things that were not brought in in the other schedule. These totals come up to sixteen and eighteen thousand, whereas the earlier ones were seven.

Q. When you get to the year 1943 you advise that the net income be increased by an item which you have labeled "Attorney fees as additional net income, $7,500.00." Did I read that correctly?

A. Yes.

Q. That is that item we were talking about a little while ago?

A. Yes.

Q. So, these figures come pretty close to offsetting each other, don't they, when you get to totaling them up?

A. Roughly.

Q. Now, I will read from the following paragraph. I am looking at page 4:

684 "Since the taxpayer refuses to disclose the source or nature of his income so that the correctness of the income shown may be ascertained, he cannot expect a refund of tax by pointing out an error in his favor in a method of computing income which is of itself in error. Such an adjustment is, however, sufficient to offset similar errors used to establish additional income."

That is part of your report, isn't it?

A. Yes, sir.

Q. And that is your attitude, is it? Is that your opinion, that if a taxpayer doesn't keep things exactly the way you would like to have them, you are justified in refusing to approve a claim which you know is based upon the fact. Is that your attitude?

A. Well, I don't think that that is the attitude I was attempting to express here.

Q. Well, you tell me what you mean by it. I will read it again:

"Since the taxpayer refuses to disclose the source
685 of his income so that the correctness of the income shown may be ascertained, he cannot expect a refund of tax by pointing out an error in his favor in a method of computing income which is of itself in error. Such an adjustment is, however, sufficient to offset similar errors used to establish additional income."

Am I correct when I read that and understand you are really setting up a penalty as against a taxpayer who didn't keep the books to meet your approval? In other words, if he kept the kind of set of books that you would have approved of, you would have O.K.'d this claim, wouldn't you?

A. Yes. If he had the type of books that I keep in my business—and this was brought out—I think it would unquestionably have been allowed.

686 Q. During your short term with the Government, did you have occasion to investigate the returns made by people that were engaged in getting part or all of their income through gambling operations?

A. No, sir.

Q. You didn't have experience in that field?

A. No, sir.

Q. But you knew, from being around the office there, that there were certain agents that more or less specialized in that field, did you not?

A. Yes.

Q. Now I am reading further from your report:

"It is, therefore, recommended that the claim for refund of tax paid in 1943 in amount of $11,548.57 filed on or about January 28, 1947 be denied in full because the income shown has not been proven to be
687 in error, and that the returns for the years 1942 and 1943 showing net income of $69,079.71 and $75,185.00

respectively, and income tax liability of $38,478.28 and $55,418.67, respectively, be accepted as filed subject to the verification of the computations on the returns."

Am I correct in understanding that after you made the recommendation that the fire loss claim be rejected, that you recommended to your superiors that the tax returns as shown and set out by you be accepted as filed?

A. Yes, I did.

Q. As far as you know, your report was adopted by your superiors?

A. As far as I know.

Q. And while you were with the service for some little time after this report was turned in, were you not?

A. About seven or eight months, yes.

Q. And you know that no 90-day letter was sent out in connection with this, don't you?

A. I don't know that, no.

688 Q. And no such step was ever called to your attention, was it?

A. No, it hasn't been.

Q. And you have never been called to testify before concerning DeLucia's tax matters, have you?

A. No, I have not.

Q. Well, to summarize this, Mr. Armstrong, if your recommendation was adopted by your superiors, it really amounted to a settlement, didn't it?

A. Yes.

Redirect Examination.

By Mr. Barnett:

Q. Mr. Armstrong, when Mr. Stewart asked you if that amounted to a settlement, you didn't mean settlement in the manner in which the Bureau usually refers to a settlement, did you?

A. No, I thought he meant that that closed those years.

Q. Yes.

By Mr. Stewart: Say, I forgot something. Do you mind my interrupting?

689 *Cross Examination (Continued).*

By Mr. Stewart:

Q. I took you over that report well enough for you to agree with me that you didn't say anything in your report about the amount of cash on hand that you found from examining the papers over in Mr. Bernstein's office?

There is nothing about that in your report, is there?

A. No.

By Mr. Stewart: That's all.

By The Court: Are you objecting to the admissibility of the document now?

By Mr. Stewart: No, your Honor. I practically put it in.

By The Court: It may be received.

(Said document, so offered and received in evidence, was marked Government Exhibit 63.)

GOVERNMENT EXHIBIT NO. 63
(Report of Revenue Agent Armstrong)
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Chicago 3, Illinois
September 30, 1947

Office of
Internal Revenue Agent
in charge
Chicago Division
Rm. 1100, 105 W. Adams St.
Mr. Paul DeLucia
United States Penitentiary
Leavenworth, Kansas

Dear Mr. DeLucia:

I enclose a copy of the report of the examination of your income tax return(s) for the year 1943, in connection with your claim for a refund of $11,548.57. The report, which has been carefully reviewed by this office, discloses no grounds for reduction of your tax liability.

If You Agree to the conclusions expressed in the report, please so advise this office at your earliest convenience.

If You Do Not Agree to these conclusions, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration and, if you so request, an opportunity for a hearing in this office will be granted you. This office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the conclusions

expressed in the report or a written protest, a recommendation will be made to the Commissioner of Internal Revenue that your claim be disallowed.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Very truly yours,

(signed) E. C. Wright
Internal Revenue Agent in Charge.

Enclosures:
Report of examination.
Form of acknowledgment.
Examining Officer: F. S. Armstrong, Jr.
Name and address on return:
Paul DeLucia
812 Lathrop Ave.,
River Forest, Illinois

Mailed Nov. 14, 1947
Time spent: 4 days 4 hours
Grade: D
Chicago, Illinois
May 29, 1947

Present name and address, if different:
Leavenworth, Kansas
United States Penitentiary,
Paul DeLucia
Internal Revenue Agent in Charge,
Chicago, Illinois.

An examination of the books and records of the above-named individual for the year indicated below disclosed the following:

SUMMARY

Year	Income Tax	District in which returns were filed:
1943	Overassessment None	1st Illinois

Date return filed: Original: 1942—3/13/43,
1943—3/15/44.

Nature of business: Speculator.
Authority for examination: Original returns.
Comparison made with: Memoranda and cancelled checks.
Method elected in deducting bad debts: None claimed.
Claims (date filed and years covered): On or about January 28, 1947 for year 1943 in amount of $11,548.57.
Correspondence from Bureau: None.
Method of accounting: Cash basis.

Other information: Taxpayer is serving a ten-year sentence in the Federal penetentiary at Leavenworth, Kansas. He was convicted on December 14, 1943 of a charge of extortion in the Federal Court of the Southern District of New York.

Taxpayer was not contacted. The examination was made from records in the custody of taxpayer's representative, Eugene Bernstein. These records were found to consist of memoranda of computations of income, bank statements, and cancelled checks, and some paid invoices.

The income shown on the returns for 1942 and 1943 was computed on a net worth basis, which method has been employed by this taxpayer in prior years. From the total of the opening bank balance and cash on hand at the beginning of the year, and the itemized expenditures during the year by check and by cash, the remaining balances were deducted at the end of the year to arrive at the income for the year. No record of receipts of income or of the nature or source of income was kept by the taxpayer.

PRELIMINARY STATEMENT

INDEX: Examining Officer: F. S. Armstrong, Jr.

Preliminary Statement—1 page

Date of Report: May 29, 1947

SUMMARY

Year	Overassessment
1943	None

Business connections of taxpayer: Speculator.

Status and reason for all exemptions: Taxpayer was married and living with his wife. He had three dependent children under eighteen years of age.

State whether or not wife filed separate returns, the exemption claimed and name of spouse: Not known.

Information on Claim: A timely claim was filed on or about January 28, 1947 for refund of tax paid in 1943 in amount of $11,548.57 based on an alleged overstatement of net income resulting from the inclusion of the proceeds of an insurance loss settlement in gross income. This examination disclosed no conclusive proof of an overstatement of net income. It is accordingly recommended that the aforementioned claim for refund be denied in full.

The 1942 tax liability has been discharged by the Current Tax Payment Act of 1943.

An examination and recapitulation of the invoices and cancelled checks evidencing the expenditures for each year was made and disclosed many discrepancies in the taxpayer's figures. These discrepancies in some instances resulted in additions to the resultant income figure, and in others in reductions. An itemization of the discrepancies follows:

Item	Effect on Income	
1942	Increase	Decrease
Insurance	$ 211.00	
1941 Income tax paid	270.03	
	$ 481.03	
1943.		
1942 and 1943 Income tax payments		$2,281.70
Farm expenses	$ 907.41	
Victory Bonds Purchased	1,000.00	
Home Mortgage	373.80	
Real Estate and Personal Property taxes		157.73
Fire Expense		97.70
Doctor and Hospital Bills	553.38	
Oil	140.35	
River Forest Insurance	367.06	
Flowers	254.04	
Riding Academy	433.27	
Public Utilities	974.87	
Personal Spending (on basis of amount estimated for 1942)	1,800.00	
Miscellaneous	838.66	
	$7,642.84	$2,537.13

It should be made clear that the foregoing corrections are concerned with taxable income by reason of the fact that they, as expenses of any nature, represent income to the taxpayer because he admits income to the extent of all

of his expenditures as adjusted by net worth variation. These items are involved in the gross income determination, therefore, even though they might be allowable from income as deductions, in determining net income.

In addition to the foregoing purely mechanical errors in the computation of the gross income on the basis adopted, other possible adjustments were noted. Such items as household expenses, clothing expenditures, personal expenditures, domestic help, etc., made by cash payments were estimated. It is the opinion of this agent that the estimates are low.

Furthermore, no account of the expenses involved in defending the taxpayer successfully against the charge of extortion incurred in 1943 was taken into consideration in determining the 1943 net income. Inasmuch as such expenditures represent additional income because met out of income, and are not deductible because they represent personal expense, the total of such expenses would represnt additional taxable income. It was ascertained that attorney A. Bradley Eben was paid $15,000.00 in cash in 1943 by the six Chicago defendants involved. Mr. Eben did not state who actually made the payment, but in fact said he did not recall. He gave the impression that he represented all the defendants, but it appears from the enclosed letter from the New York Division that he actually represented only two of the defendants, namely, Paul DeLucia and Charles Gioe. This would indicate that at least $7,500.00 of attorney fees should be added to the taxable net income for 1943.

In 1943 a summer home in Indiana title to which was recorded in the name of taxpayer's wife, Nancy DeLucia, was destroyed by fire. Cash expenditures of $4,931.18 not

included in income determination appeared to exceed the insurance settlement received after deduction of the balance due on a mortgage. When this matter was called to the attention of the taxpayer's representative, Eugene Bernstein, he checked further into the matter and discovered that a net total of $20,730.87 was paid to Nancy DeLucia in settlement of the fire loss, which entire amount was deposited in taxpayer's bank account, considered in the income computation. These facts were proved to this agent's satisfaction by securing photostatic of the checks which in total coincided with a deposit shown on the bank statement for the month of May, 1943. From these circumstances taxpayer's computation of taxable income has taken into consideration as taxable income the amount of the insurance recoveries, which is obviously not taxable income. To protect his client Eugene Bernstein prepared a claim for $11,548.57, representing the tax paid on the insurance proceeds of $20,730.87 included in income. This claim was filed on or about January 28, 1947.

Other adjustments possible include disallowance of the farm loss claimed in 1942; disallowance of taxes claimed which were actually levied against taxpayer's wife, disallowance of medical, dental, etc., expenses claimed in 1943 but paid in 1942, disallowance of the business loss in 1943 for lack of supporting evidence, and the allowance of $1,800.00 of interest paid in 1942 not claimed as a deduction on the return.

The net effect of these adjustments and the corrections to the net worth method of income computation previously set forth may be seen from the following schedule:

Adjustment	Increase in net income	Decrease in net income
Year 1942		
Adjustments to gross income computation	$ 481.03	
Taxes, unallowable	328.76	
Farm loss, unsubstantiated	1,476.92	
Interest, additional allowable		$ 1,800.00
Total	$ 2,286.71	$ 1,800.00
Year 1943		
Adjustments to gross income computation	$ 7,642.84	$ 2,537.13
Attorney fees as additional net income	7,500.00	
Business loss, unsubstantiated	675.00	
Taxes, unallowable	360.72	
Medical expense, unallowable	515.00	
Insurance proceeds as income reported in error		
Received—Net of mortgage $20,730.87		
Repairs—Not included in income computation 4,304.68		$16,426.19
Total	$16,693.56	$18,963.32

As it is apparent from the foregoing that the net result of the adjustments required would be to reduce taxpayer's tax liability, no adjustments have been made in this report. Taxpayer's method of computing income is irregular, unreliable, and not in accordance with Section 29.54-1 Regulations 111. Since the taxpayer refuses to disclose the source on nature of his income so that the correctness of

the income shown may be ascertained, he cannot expect a refund of tax by pointing out an error in his favor in a method of computing income which is of itself in error. Such an adjustment is, however, sufficient to offset similar errors used to establish additional income.

It is therefore recommended that the claim for refund of tax paid in 1943 in amount of $11,548.57 filed on or about January 28, 1947 be denied in full because the income shown has not been proven to be in error, and that the returns for the years 1942 and 1943 showing net income of $69,079.71 and $75,185.00 respectively and income tax liability of $38,478.28 and $55,418.67 respectively be accepted as filed subject to the verification of the computations on the returns.

Prepayment credits claimed are correct.

Enclosures:

Original returns for 1942 and 1943

New York Division Letter dated 4/22/47

Copy of 30-day letter to taxpayer.

(signed) Frederick S. Armstrong, Jr.
Internal Revenue Agent

REMARKS:

Held 30 days. No protest filed.

Redirect Examination (Continued).

By Mr. Barnett:

Q. You do say this in your report, though, do you not, Mr. Armstrong:

690 "The income shown on the returns from 1942 and 1943 was computed on a net worth basis which method has been employed by this taxpayer in prior years. From the total of the opening bank balance and cash on hand at the beginning of the year, and the itemized expenditures during the year by check and by cash, the remaining balances were deducted at the end of the year to arrive at the income for the year."

You put that in your report, did you not?

A. Yes, that is in the report but no figures for cash, I think, is what Mr. Stewart meant.

Q. Now, Mr. Stewart took you over, at some length, the figures of various items of expenditures which you found and, from time to time, Mr. Stewart made reference to whether you allowed or disallowed certain items.

It is true, is it not, that in the investigation of the ordinary tax return, there are certain expenses that are claimed in the return, are there not?

A. Yes.

691 Q. If you in auditing such a return find those expenses or deductions made by the taxpayer legitimate, you will allow them, and if you do not feel that they are true deductions you will disallow them, is that correct?

A. That is correct.

Q. But in your reference to these figures of expenditures here, you did not have that in mind, did you?

A. No. Well, in some cases, where we were talking about disallowing the farm loss, I did. But generally where I was listing them as increases or decreases from income, I was simply recording whether or not they had correctly been reflected in the computation of income under this expenditure method.

Q. That would have nothing to do with whether it was a properly deductible item or not, would it?

A. No.

Q. That was merely for the purpose of arriving at income?

A. Right, and once in income, it might be deduc-
692 tible as a legitimate deduction.

Q. The claim for refund was filed by Mr. Bernstein in January of 1947, I believe?

A. January 28, I think my report states, on or about.

Q. Immediately prior to that claim for refund, did you have a telephone conversation with Mr. Bernstein?

A. Yes.

Q. Then after that telephone conversation, did you go to his office?

A. Yes.

Q. Will you tell us what the telephone conversation with Mr. Bernstein was immediately prior to the claim for refund?

A. Well, he called me and asked me where we stood on the DeLucia case, and I told him that I had these various adjustments that I have listed here to increase income.

He asked me, "Well, are you satisfied now that that is all?" I said yes, and he said, "You know I don't agree to them, to all of them."

I said I know you don't, but I am going ahead on that basis, whether or not you will agree to them.

693 So he said, "Well, I have something I want to discuss with you," and asked me to come to see him, and I then went.

Q. That was the end of the telephone conversation?

A. Yes.

Q. Up to this time had you ever heard anything of the claim for refund?

A. No.

Q. All right. Then you went to see him after that telephone conversation?

A. Yes.

Q. What was the conversation when you went to see him?

A. Well, he showed me these photostatic copies of the checks which had been deposited in this bank account which was used in the determination of income, and obviously it just offset all of my adjustments.

694 By Mr. Barnett: Mr. Stewart yesterday asked us to hold Mr. Klein for further questioning.

By Mr. Stewart: I just want to ask him one question or two.

By The Court: All right. Mr. Klein.

NATE KLEIN, testified as follows:

Cross Examination (Resumed).

By Mr. Stewart:

Q. You are the same Mr. Klein, Revenue Agent, who was on the stand yesterday?

A. I am.

Q. Referring to the conversation you had with Mr. DeLucia, which you testified to yesterday, and that took about three hours in your office, during that time did you ask Mr. DeLucia if the cash you were talking about as being on hand at any particular period, opening and closing, was all the cash that Mr. DeLucia possessed or had?

A. I did not.

Q. You weren't concerned in that?

695 A. No, it didn't affect me.

Q. Your memory of the books, as you remember them now, did they reflect or say that that was the total cash that Mr. DeLucia possessed?

A. Well, the books just reflected the cash in three categories.

Q. And they didn't say it was all the cash, did they?

A. No, there was no notation. Just the categories and the amounts.

Redirect Examination.

By Mr. Barnett:

Q. Mr. Klein, Mr. DeLucia's books showed cash in

three categories, is that right?

A. That is right.

Q. Cash in vault, cash in pocket, and cash in bank?

A. That is right.

Q. In your analysis of his income, did you treat that as all the cash available to him, at beginning and end of the years?

A. In making the computation, yes.

696 Q. Now Mr. Stewart inquired of you yesterday if you had audited a number of returns of other persons who were engaged in similar activities as Mr. DeLucia, and you said that you had, is that correct?

A. That is right.

Q. Is this a common method of reporting cash available, cash in vault, cash in pocket and cash in bank?

A. In the case of individuals engaged in certain enterprises, it was the common method of keeping a record of their cash balances.

Q. But I mean the phraseology, cash in vault, cash in pocket and cash in bank?

A. No.

Q. Did everybody use that terminology?

A. No. I think you are talking about a bank vault method?

Q. I am not talking about anything. I just want you to answer the question.

A. I didn't get the question.

Q. I say, does everybody use that phraseology, cash in vault, cash in pocket and cash in bank?

A. I don't know what you mean by "everybody."

697 Q. All the other people that you audited, did they all use that same phraseology?

A. Are you referring to people that are in the same sort of an enterprise?

Q. Yes.

A. No.

Q. This was Mr. DeLucia alone?

A. Well, yes, he was the only one that had the cash in three different categories.

698 Q. In your experience—incidentally, you testified that Mr. DeLucia told you that his source of income was gambling, right?

A. That is right.

Q. In your experience in auditing these people, what does that phrase "gambling" mean?

A. Oh, it means several things. In some instances it means operating a gambling house, and in other instances it means personal betting. There are two different items.

Q. Does it include any other types of income?

A. Well, in some cases men who have different enterprises, especially illegal enterprises, will call them all "gambling."

VOL.

II

No. 745

Office-Supreme Court, U.S.
FILED
MAR. 3. 1959
Clerk

No. 12399

In the

United States Court of Appeals

For the Seventh Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PAUL DE LUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern, Division.

Honorable Julius H. Miner, District Judge.

Appendix for Defendant-Appellant

IN THREE VOLUMES

Volume II—Pages 245 to 500

Index in Vol. I

Wm. SCOTT STEWART
Chicago Temple
Chicago 2, Illinois
Attorney for Defendant-Appellant

McCORMICK & HENDERSON, INC., CHICAGO, ILL.

No. 12399

In the

United States Court of Appeals

For the Seventh Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PAUL DE LUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, District Judge.

Appendix for Defendant-Appellant

IN THREE VOLUMES

Volume II—Pages 245 to 500

Index in Vol. I

705 WILLIAM A. RUGGABER, was recall and testified further as follows:

Direct Examination.

By Mr. Barnett:

Q. Mr. Ruggaber, as a result of your examination, you prepared a report, which is Government's Exhibit
706 No. 55, is that correct?

A. Yes, sir.

GOVERNMENT EXHIBIT NO. 55

(Report of Agent William M. Ruggaber)

Mailed Aug. 7, 1945; Time spent: 22 Days; Grade: "D"; Related cases: None Chicago, Illinois December 12, 1944

Examining Officer: Wm. M. Ruggaber

Name and address on return:

Paul DeLucia
812 Lathrop Ave.,
River Forest, Illinois

Present name and address, if different:

[redacted] DeLucia—63776-A
c/o United States Penitentiary
Atlanta, Georgia

Internal Revenue Agent In Charge,
Chicago Illinois

A re-examination for the years 1936, 1937, 1938 and 1939 and an original examination for the years 1935, 1940 and 1941 of the books and returns of the above-named individual disclosed the following:

SUMMARY

Income Tax

Year	Deficiency	Overassessment	50% penalty	Dist. filed
1935	$10,571.80	None	$ 5,285.90	1st Illinois
1936	34,614.75	None	17,307.37	1st Illinois
1937	42,678.61	None	21,339.30	1st Illinois
1938	6,124.43	None	3,608.16	1st Illinois
1939	None	None	None	1st Illinois
1940	48.40	None	None	1st Illinois
1941	53.00	None	None	1st Illinois

Income Tax

Net deficiency	$ 94,090.99
50% Penalty	47,540.73
Totals	$141,631.72

Date return filed: Tentative: None for any year Original:

1934—3/14/35	1938—3/15/39
1935—3/11/36	1939—3/13/40
1936—3/ 9/37	1940—2/17/41
1937—3/15/38	1941—3/13/42

Authority for examination: Original returns for all years examined.

Comparison made with: No available records. Comparison made with trial testimony as to extortion payments.

Method elected in deducting bad debts: Actual

Was an agreement to the findings procured? No

Consents attached to return: 1939 expires 6/30/46
1940 expires 6/30/46
1941 expires 6/30/46

Claims: None

Correspondence from Bureau: None

Method of accounting: Cash basis

Other information:

At no time during the examination was this taxpayer contacted for the reason that prior to his conviction in December 1943 in the Federal District Court in New York

City, for extortion, this department did not desire to interfere with the investigation by other Federal departments. While under indictment it was not advisable to contact the taxpayer while he was available in Chicago for the reason that he could legitimately refuse to answer questions pertaining to his income for fear of incrimination. Consequently no action was taken until after the trial and conviction and until the trial testimony was available. This case, while not associated with the case of George E. Browne, the convicted labor leader, is in fact a sequel to his case.

The testimony in the earlier trial of George E. Browne and Willie Bioff, together with the testimony of the second trial in which this taxpayer was also convicted, was briefed, and the income taxable to the several persons was established from the information and evidence disclosed at those two trials. The case of George E. Browne was completed in October of 1944 and the exhibits used in this case and the Browne case are identical.

There were two principal sources of income via the conduit of Browne and Bioff and they were, first, the payments made by the producers and the exhibitors of moving pictures to Brown and Bioff as labor leaders to keep them from demanding the restoration of paycuts previously taken by the moving picture operators in the various movie houses throughout the country, which Browne as International President controlled. Second, the 2% assessment fund raised from the salaries of the self same operators, which was to be used for union organization purposes but actually was expended by the union officials and the hoodlums that they represented, this taxpayer being one of the so called Nitto mob whose members were indicted and convicted of extortion.

The various exhibits attached to this case disclose the sources of income and the distribution among the various

recipients. Browne and Bioff received one third to be divided among themselves, while the mob received the other two thirds with one exception, the $20,000.00 item. This two thirds has been divided in these examinations equally between Frank Nitto, now deceased, this taxpayer and Louis Campagna. Revenue agent P. J. Boylan is writing the cases against the estate of Frank Nitto and against Louis Campagna.

The taxpayer has reported "Miscellaneous Income" for the years beginning with 1937 and in computing the income from the moving picture companies credit was given for such miscellaneous income previously reported. For the years 1935 and 1936 the taxpayer discloses his principal income on line 1 where one usually reports, salaries, commissions, fees and similar income. No identification was possible so no credit has been given for income reported in those two years. *The taxpayer was examined for the year* 1936 *by an office Auditor and he explained the income disclosed on line* 1 *of the return as being from winnings on the Joe Louis-Max Schmeling fight.*

The earned income credit has been restricted to the statutory minimum in the years after 1936 when the income was reflected under the caption of "Miscellaneous Income".

The 1938 and 1939 returns were examined by Revenue Agent Ned Klein who established income on the "Expenditure Basis". Credit has been given the taxpayer for the amounts whereby his income in those two years was increased with the result that no additional tax is recommended for the year 1939 for Revenue Agent Klein increased the net income to $75,819.28 and the total distributive share allocated to him from the Browne Bioff deal totals only $42,051.93 as shown by Exhibit "E" of this report.

No fraud penalties are recommended for the years 1940 and 1941 for the reason that adjustments in those two years are merely technical.

The fraud penalty recommended in all other years and is based on the omission from income of the sums which the taxpayer received from the Bioff and Browne distribution upon which the taxpayer was convicted together with others of the charge of extortion.

The distribution of funds referred to earlier as being on the basis of one third to Browne and two thirds to the others had one exception and that was the $20,000.00 item in 1935 which came from New York and was divided on a fifty-fifty basis, Browne and Bioff admitted getting $10,000.00 which they divided equally and the other $10,000.00 went to the syndicate and has been divided equally between Nitto, Campagna and this taxpayer in this examination.

There was no income found for the year 1934 and the return was merely used for reference purposes.

All evidenciary exhibits substantiating payments is in the hands of the Special Agent's office, Special Agent Tracy Stains having co-operated with the examining officer.

Enclosures:

(Original returns 1935, 1936, 1937,
(1938, 1939, 1940 and 1941
Original return 1934 for reference
R.A.R. (Partial) dated 10/4/37 for 1936
R.A.R. (Partial) dated 12/22/38 for 1937
R.A.R. dated 12/21/40 for 1938 and 1939
Letter from Acting Sp.Agt. in Chgo. dated 2/20/45 with report dated 2/16/45
Copy of 90-day letter to taxpayer dated 5/1/45.

(Signed) Wm. M. Ruggaber
Internal Revenue Agent

PRELIMINARY STATEMENT

Preliminary statement)
Index: and schedules 1-10) 7 pages
Exhibits A-G) 7 pages
Total 14 pages

Name of Taxpayer—Paul De Lucia
Date of Report—December 12, 1944
Examining Officer—Wm. M. Ruggaher

STATEMENT OF TOTAL TAX LIABILITY
INCOME TAX

YEAR	Liability Tax	Liability 50% Fraud Penalty	Previously Assessed* Tax	Previously Assessed* 50% Fraud Penalty	Adjustments Proposed In This Report Tax Deficiency	Adjustments Proposed In This Report 50% Fraud Deficiency
1935	$ 11,205.40	$ 5,285.90	$ 633.60	None	$10,571.80	$ 5,285.90
1936	36,795.75	17,307.37	2,181.00	None	34,614.75	17,307.37
1937	49,279.27	21,339.30	6,600.66	None	42,678.61	21,339.30
1938	$ 19,022.65	3,608.16	$12,898.22	None	$ 6,124.43	$ 3,608.16
1939	19,285.39	None	19,285.39	None	None	None
1940	19,082.10	None	19,033.70	None	$ 48.40	None
1941	$ 33,416.03	None	$33,363.03	None	$ 53.80	None
Total	$188,086.59	$47,540.73	$93,995.60	None	$94,090.99	$47,540.73

*Summary of Adjustments of Assessments Year 1938

Originally assessed	$ 11,806.33
Deficiency assessed, 1941	1,091.89
Net Previous Assesments	12,898.22

Year 1939

Originally assessed	$ 16,793.68
Deficiency assessed, 1941	2,491.71
Net Previous Assessments	19,285.39

The principal change in tax liability is due to: Additions to income of the taxpayer's shares of distribution of extortion money for the years 1935 through 1938, and adjustments to the earned income credit in the years 1940 and 1941.

The changes were not discussed with the taxpayer.

Status and reason for all exemptions: Married and living with his wife during all years examined. Two dependent children under 18 years of age during 1935, 1936 and 1937 and three during 1938, 1939, 1940 and 1941.

Wife filed no separate return and has no known separate income.

Important Features:

The earned income credit was claimed on the $14,000.00 statutory maximum earned income for the year 1940 and 1941. This has been reduced to the statutory minimum of $300.00 since the sources of the taxpayer's known income are not recognized as earned income.

SCHEDULE 1

Adjustments to Net Income

	Year ended December 31, 1935
Net income as disclosed by return	$13,260.00
As corrected	58,017.06
Net adjustment as computed below	44,757.06
Unallowable deductions and additional income:	
(a) Other income	$44,757.06

SCHEDULE 1-A

(a) Other income $44,757.06

The taxpayer omitted from income his share of extortion payments collected by W. Bioff and George Browne, Labor leaders, from various moving picture producing and exhibiting companies. Total extortions amounted to $206,406.79 for the year which were divided one third to Bioff and Browne and two thirds to Nitto, Campagna and this taxpayer. The two thirds has been divided equally between the last three individuals and this taxpayer's distributive share totals the amount shown as additional income above. See Exhibit "A" for details as to the sources and the method of distribution.

SCHEDULE 2

Computation of Tax—1934 Act

Individual

		Year ended December 31, 1935
Net income (from Schedule 1)		$58,017.06
Less: Personal exemption	$2,500.00	
Credit for dependents	800.00	3,300.00
Balance (surtax net income)		$54,717.06
Less: Dividends	$1,260.00	
Earned income credit	1,200.00	2,460.00
Balance subject to normal tax		$52,257.06
Normal tax at 4 percent	$2,090.28	
Surtax	9,115.12	
Total tax assessable		$11,205.40
Tax previously assessed		$ 633.60
Additional tax to be assessed		$10,571.80
50% Fraud Penalty		$ 5,285.90
Total additional tax and penalty		$15,857.70

SCHEDULE 3

Adjustments to Net Income

	Year ended December 31, 1936
Net income as disclosed by return	$ 24,000.00
As corrected	107,899.61
Net adjustment as computed below	83,899.61
Unallowable deductions and additional income:	
(a) Other income $83,899.61	

SCHEDULE 3-A

Explanation of Items

(a) Other income $83,899.61

The taxpayer omitted from income his share of extortion money collected by W. Bioff and George E. Browne, labor leaders, from various moving picture producing and exhibiting companies. Total extortions for the year 1936 amounted to $377,548.00 and were divided one third to

Bioff and Browne and two thirds to Nitto, Campagna and the taxpayer. The two thirds has been divided equally among the last three named individuals in this examination and this taxpayer's distributive share is detailed in Exhibit "B".

SCHEDULE 4

Computation of Tax—1936 Act

Net income (from Schedule 3)		$107,899.61
Less: Personal exemption	$2,500.00	
Credit for dependents	800.00	3,300.00
Balance (surtax net income)		$104,599.61
Brought Forward		$104,599.61
Less: Earned income credit		1,400.00
Balance subject to normal tax		$103,199.61
Normal tax at 4 percent	$ 4,127.98	
Surtax	32,667.77	
Total tax assessable		$ 36,795.75
Tax previously assessed		$ 2,181.00
Additional tax to be assessed		$ 34,614.75
50% Fraud Penalty		$ 17,307.37
Total additional tax and penalty		$ 51,922.12

SCHEDULE 5

Adjustments to Net Income

Year ended December 31, 1937

Net income as disclosed by return		$ 42,916.63
As corrected		127,963.34
Net adjustment as computed below		85,046.71
Unallowable deductions and additional income:		
(a) Other income	$85,046.71	

SCEDULE 5-A

(a) Other income	Reported	$39,400.00
	Corrected	124,446.71
	Income increased	$85,046.71

The taxpayer omitted from income his correct distributive share of extortion and 2% funds collected through W. Bioff and George E. Browne, labor leaders. Total funds from this source amounted to $560,010.00 of which Bioff and Browne received one third and Nitto, Campagna and this taxpayer received the [redacted] thirds balance. The two thirds has been divided equally among the last three individuals. On the return as filed the taxpayer has disclosed Other income totaling $39,400.00 which is credited against his one third share of the two thirds divided among Nitto, Campagna and himself. The one third amounted to $124,446.71 less the amount reported leaves an unreported amount of $85,046.71.

See Exhibit "G" for the various amounts, the sources and the method of distribution.

SCHEDULE 6

Computation of Tax—1936 Act

Individual

Year ended December 31, 1937

Net income (from Schedule 5)		$127,963.34
Less: Personal exemption	$2,500.00	
Credit for dependents	800.00	$ 3,300.00
Balance (surtax net income)		$124,663.34
Less: Earned income credit		300.00
Balance subject to normal tax		$124,363.34
Normal tax at 4 percent	$4,974.53	
Surtax	44,304.74	
Total tax assessable		$ 49,279.27
Tax previously assessed		$ 6,600.66
Additional tax to be assessed		$ 42,678.61
50% Fraud Penalty		$ 21,339.30
Total additional tax and penalty		$ 64,017.91

SCHEDULE 7

Adjustments to Net Income

Year ended December 31, 1938

Net income as disclosed by Revenue agent report 12/21/40		$62,546.72
As corrected		76,624.80
Net adjustment as computed below		14,078.08
Unallowable deductions and additional income:		
(a) Other income	$14,078.08	

SCHEDULE 7-A

Explanation of Items

(a) Other income as per prior report	$59,749.72
Corrected	73,827.80
Income Increased	$14,078.08

In the examination of W. Bioff and George Browne extortion collections and 2% pay roll assessments totaled $332,225.00 for the year 1938. This taxpayer's distributive share as shown by Exhibit "D" amounted to $73,827.80.

The return for the year 1938 was examined previously by Revenue Agent Ned Klein using the cash expenditure basis to determine correct income. The taxpayer on his return as filed reflected "Miscellaneous Income" of $56,950.00 which was increased to $59,749.72 in the original examination. The sources of the miscellaneous income was not determined; therefor the taxpayer is given credit for the amount previously reported on the original return and in the Revenue Agent's report. In this re-examination corrected miscellaneous income is increased to $73,827.80, less amounts previously reflected totaling $59,749.72 leaves an unreported balance of $14,078.08.

SCHEDULE 8

Computation of Tax—1938 Act

Individual

Year ended December 31, 1938

Net income (from Schedule 7)		$76,624.80
Less: Personal exemption	$2,500.00	
Credit for dependents	1,200.00	$ 3,700.00
Balance (surtax net income)		$72,924.80
Less: Earned income credit		300.00
Balance subject to normal tax		$72,624.80
Normal tax at 4 percent	$2,904.99	
Surtax	16,117.66	
Total tax assessable		$19,022.65
Tax previously assessed Original	$11,806.33	
Jan. 1941 list #514842	1,091.89	$12,898.22
Additional tax to be assessed		$ 6,124.43
50% Fraud Penalty		$ 3,608.16
Additional tax and penalty		$ 9,732.59

SCHEDULE 9

Adjustments to Net Income

Year ended December 31, 1940

Net income as disclosed by return	$60,657.00
As corrected	60,657.00
Net adjustment as computed below	None

Adjustment to Earned income credit only

The taxpayer claimed $1,400.00 as earned income credit. Only $300.00 is allowed in this report for reasons previously stated.

SCHEDULE 10

Computation of Tax—Internal Revenue Code

Individual

Net income (from Schedule 9)		$60,657.00
Less: Personal exemption	2,000.00	
Credit for dependents	1,200.00	3,200.00

Balance (surtax net income)		$57,457.00
Less: Earned income credit		300.00
Balance subject to normal tax		$57,157.00
Normal tax at 4 percent	$2,286.28	
Surtax	$15,061.08	
Total tax		$17,347.36
Defense tax (10 percent)		$ 1,734.74
Total tax assessable		$19,082.10
Tax previously assessed		$19,033.70
Additional tax to be assessed		$ 48.40

SCHEDULE 9

Adjustments to Net Income

Year ended December 31, 1941

Net income as disclosed by return	$72,141.33
As corrected	72,141.33
Net adjustment as computed below	None

Unallowable deductions and additional income:

(a) Error in computation of normal tax
Error in earned income credit claimed.

Claimed	$1,400.00
Allowed	300.00

SCHEDULE 10

Computation of Tax—Internal Revenue Code

Net income, from Schedule 9		$72,141.33
Less: Personal exemption	$1,500.00	
Credit for dependents	1,200.00	$ 2,700.00
Surtax net income		$69,441.33
Less: Earned income credit		300.00
Balance subject to normal tax		$69,141.33
Normal tax at 4 percent	$2,765.65	
Surtax	30,650.38	
Correct income tax liability		$33,416.03
Tax assessed		$33,363.03
Deficiency		$ 53.00

Q. And which I have here.

I would like to read a portion of the report. The first paragraph on page 2 reads:

"At no time during the examination was this taxpayer contacted for the reason that prior to his conviction in December, 1943, in the Federal District Court in New York City, for extortion, this department did not desire to interfere with the investigation by other Federal departments. While under indictment it was not advisable to contact the taxpayer while he was available in Chicago for the reason that he could legitimately refuse to answer questions pertaining to his income for fear of incrimination. Consequently no action was taken until after the trial and conviction and until the trial testimony was available. This case, while not associated with the case of George E.
707 Browne, the convicted labor leader, is in fact a sequel to his case.

"The testimony in the earlier trial of George E. Browne and Willie Bioff, together with the testimony of the second trial in which this taxpayer was also convicted, was briefed, and the income taxable to the several persons was established from the information and evidence disclosed at those two trials. The case of George E. Browne was completed in October of 1944 and the exhibits used in this case and the Browne case are identical."

708 In the next paragraph you make mention of the fact that—I am not going to read the entire portion, but—

"There were two principal sources of income via the conduit of Browne and Bioff and they were, first, the payments made by the producers and the exhibitors of moving pictures to Brown and Bioff as labor leaders . . . "

And the other source of income was:

" . . . the 2% assessment fund raised from the salaries of the operators."

And, in the next paragraph, you mention:

"The various exhibits attached to this case disclose the sources of income and the distribution among the various recipients. Browne and Bioff received one-third to be divided among themselves, while the others received the other two-thirds with one exception, the $20,000 item."

709 That $20,000 item is explained elsewhere in your report, is it not, Mr. Ruggaber?

A. Yes, sir, it is.

710 Q. Now, then, in the next paragraph you state—pardon me.

"This two-thirds has been divided in these examinations equally between Frank Nitto . . . this taxpayer"

referring to Paul DeLucia

" . . . and Louis Campagna."

The reference to "taxpayer" throughout this report refers to Paul DeLucia, does it not, Mr. Ruggaber?

A. It does.

Q. In the next paragraph it says:

"The taxpayer has reported 'Miscellaneous Income' for the years beginning with 1937 and in computing the income from the moving picture companies, credit was given for such miscellaneous income previously reported."

And then another paragraph reads:

"The 1938 and 1939 returns were examined by Revenue Agent Ned Klein who established income on the 'Expenditure Basis'. Credit has been given the taxpayer for the amounts whereby his income in those

711 years was increased with the result that no additional tax is recommended for the year 1939 for Revenue Agent Klein increased the net income to"—

seventy-five thousand and something—

"and the total distributive share allocated to him from the Browne Bioff deal totals only"—

forty-two thousand—

"as shown by Exhibit 'E' of this report."

Now, Exhibit E of this report refers to one of the tax schedules, does it, Mr. Ruggaber?

A. It does.

Q. I notice that these attached schedules, which are photostatic copies of your typewritten schedules, are Exhibits A, B, C, D, E, F and G.

Now, some of these schedules refer to specific years, is that correct?

A. Yes, sir.

712 Q. And others refer to a summarization of the income?

A. Yes, sir.

Q. Now, Mr. Ruggaber, Exhibit B, for instance—I could start with Exhibit A—refers to the calendar year 1935 and across the top of the schedule it reads "Distribution."

Then, in the extreme left-hand margin of the exhibit is an item which reads as follows:

"4/26/35."

That means a date?

A. Right.

Q. "Payment of Circuit Settlement Corp. check No. so and so, to 'Chapman and Cutler' as attorney fees in behalf of Warner Brothers, paid at Chicago, Illinois. Proceeds delivered to W. Bioff."

And then the next column is captioned "Total amount" and opposite this particular item is the figure $30,000?

A. Yes, sir.

Q. And the next column reads:

713 "Browne, one-sixth"

and beneath that is:

"$5,000."

I take it that that one-sixth means one-sixth of the $30,000 total, is that correct?

A. That is correct.

Q. And then the next column reads:

"Bioff, one-sixth, $5,000."

And the next column reads:

"Nitto, two-ninths,"

and the amount is:

"$6,656.67."

"DeLucia, two-ninths"

is the next column and that is the same amount, and:

"Campagna, two-ninths"

with one penny difference.

Now, these schedules, are they all set up in the same manner, Mr. Ruggaber?

A. Correct.

Q. That is to say, in the left-hand column is recorded the source of the money?

A. That is correct.

714 Q. And the next column records the total amount of money from that source?

A. That is right.

Q. Then the following five columns record the distribution of the money to the parties involved, is that correct?

A. That is correct.

715 Q. In order to compile that schedule, Mr. Ruggaber, you testified earlier that you examined the transcript of the trial testimony of Bioff and Browne and of DeLucia, Campagna and Nitto, *et al.*, is that correct?

A. That is right.

Q. You also testified that you had talked to some other persons?

A. I did.

Q. In arriving at that distribution, did you confirm the distribution with Mr. Browne at a date subsequent to the trial?

A. Yes, sir, I did.

Q. Where did that take place?

A. I spoke to Mr. Browne in the penitentiary at Sandstone, Minnesota, in August of 1944.

Q. I notice in reading through the schedules that there is reference to a man named Nick Circella. Can you explain what his participation in this was?

A. Nick Circella in this particular venture appeared to be the messenger boy. He would pick up the six-ninths which was distributed between Nitto, Mr. DeLucia and Campagna from Isadore Zevins, at times, in the
716 distribution of the two per cent fund, or in the funds that were picked up from the producers and exhibitors by either Bioff or Browne.

Q. Now, Mr. Stewart asked you once or twice whether or not you found any evidence that any person at the trial testified to having put any money in the hands of DeLucia himself. Do you recall that?

A. Yes, sir.

Q. And you said no, is that right?

A. That is right.

Q. The payments that were distributed to Mr. DeLucia were those payments that had been made to Mr. Circella, that is to say, part of the payments that had been made to Mr. Circella?

A. That is right.

Q. Now, Mr. Ruggaber, Mr. Stewart asked you a question concerning the transcript. I will read the question to you because it appears to me that it wasn't clear. The question which he asked you reads as follows:

"Q. So as far as your transcript is concerned, in
717 so far as those statements are concerned, Paul DeLucia could have gotten one hundred per cent of the money, so far as you are concerned, is that right?"

And you said:

"He could have."

What was your understanding of that question, Mr. Ruggaber?

By Mr. Stewart: I object to that, your Honor. He has had all this time now. If he wants to change his answer, that is something, but he can't take the transcript and say what he understood. The jury heard his answer.

By The Court: I think that is a good objection. Not what he understood.

718 By Mr. Barnett:

Q. Mr. Ruggaber, according to the evidence that was available to you, how much of the proceeds of this extortion money could have been received by Mr. DeLucia?

By Mr. Stewart: I object to that. He has answered it, and it is speculation.

By Mr. Barnett: I said "according to the evidence that was available" to him at the time.

By The Court: He testified two-ninths, didn't he?

By Mr. Barnett: I am asking for the total figure, your Honor.

By The Court: He may answer.

By The Witness:

A. The total figure was $404,000-plus.

By Mr. Barnett:

Q. Plus what?

A. Plus some odd amounts. I mean, $404,000—I don't know how much.

Q. $404,000 and some odd dollars?

A. Yes, sir.

719 *Cross Examination.*

By Mr. Stewart:

Q. I am going to read from your original report because it is easier on me, and you take this.

A. All right, sir.

Q. Mr. Ruggaber, you have been sitting in the court room since you testified before, haven't you?

A. I have, sir.

Q. You noticed in the examination of Mr. Armstrong, he told us what was meant by a "covering letter"?

A. Yes, sir.

Q. Is that in accordance with your understanding of the practice; that is, at times a form letter was sent to the taxpayer which enclosed the agent's report? At times that happened, didn't it?

A. At times that happens. That is the covering letter to a 30-day letter.

Q. Now that same practice is pursued at times with the 90-day letter, isn't it?

720 A. Not exactly the same. It is a different procedure but there are similarities there.

Q. There are times when you folks decide that you will send the agent's report along with the 90-day letter? Aren't there times such as that?

A. You are talking about the present day or the time—there has been a change in the procedure.

Q. Oh, I see. When did the change take place?

A. Well, the exact time I can't tell you, but it was subsequent to these investigations.

Q. What did it used to be? That you didn't send it out?

A. If there was a fraud penalty involved, there was no agent's report sent to the taxpayer. It was merely a statement, such as was contained in the 90-day letter.

Q. So in this case that we are talking about against DeLucia, you didn't send a copy of your report, did you?

A. No, sir.

Q. So as far as you know, the first time we have had a chance to look at your report is now, since this case

721 arose?

A. That is correct.

Q. Now, I want to call your attention to the second page of your report, and Mr. Barnett also referred to the same paragraph. I don't suppose I need read it over again further than to say that there were two principal sources of income mentioned by you and found to have existed in this case.

Is that true, that there were two sources of income?

A. Two principal sources of income, yes, sir.

722 Q. And they were distinguishable, and without going into great detail, see if I get this correctly: One sum of money you could trace it back to the moving picture magnates, the big companies, the movie people, the employers. One sum of money could be traced back to those people, isn't that right?

A. That is correct.

Q. And then the other sum of money you referred to as the two per cent fund?

A. That is right.

Q. Now if you traced that back as to where it came from, it came from a union, didn't it?

A. The union's special fund.

Q. You were here when Mr. Marsh testified also, weren't you?

A. I was.

Q. And you as a trained man in this service, you recognize, as Mr. Marsh told us, that if you can trace a fund of money into the hands of a taxpayer who is under investigation, that alone doesn't mean it is taxable income, does it? You have to find out something else about the money?

723 Just to find the money in his hands is not enough for you, is it?

A. Well, I don't know as I understand.

Q. Maybe I don't make myself clear.

When you are tracing down the financial doings of a taxpayer in an investigation, some money you find in his possession is taxable income and other money you find him with is not taxable, isn't that right?

A. It would depend upon the nature or type of income.

Q. That is right, and where it came from?

A. That is right.

Q. It is possible if a lawyer were trying to defend your claim that you made up, you see, instead of settling their case, they were going to go in and contest it before a tax court, there would be a difference between those two categories I have mentioned, one the two per cent fund and one the movie fund, isn't that right? There would be a difference as to where the money came from.

A. They are different by nature to start with.

Q. That is right, and there may have been some question about whether one fund was taxable, isn't that
724 true?

A. There never was in my mind.

Q. Well, there could be a difference of opinion, couldn't there?

A. There could be.

Q. You heard Mr. Marsh say the things that he took into consideration in recommending the settlement?

A. Yes, sir.

Q. Now I notice at the end of your report, on page 4 that is, the first part of your report, you have a list of enclosures. Do you notice that?

A. I do.

725 Q. You enclosed original returns 1935, 1936, 1937, 1938, 1939, 1940 and 1941. Was that true?

A. That is correct.

Q. And you enclosed the original return 1934 for reference?

A. Right.

Q. Then the next item I read is:

"R.A.R. (Partial) dated 10/4/37 for 1936."

What do those initials mean, "R.A.R."?

A. It means Revenue Agent's Report, partially written, meaning that he had written a report and quit, and there would be no change in liability.

Q. Do you remember the name of the agent?

A. That was an office auditor by the name of George. His last name was George.

Q. Do you have a copy of that report?

A. I am sorry to say no. I wish I did.

726 Q. You mean, there is none in existence?

A. We have looked everywhere possible for it.

Q. And have been unable to find it?

A. Unable to find it.

Q. Now the next enclosure was, "R.A.R. (partial) dated 10/4/37 for 1936."

What was that?

A. Pardon me? Could I have that again?

Q. If you count down, on the fourth line down, "R.A.R. (partial) dated 10/4/37 for 1936."

A. We just got done talking about that one.

Q. That is the one we just talked about?

A. Yes, sir.

Q. It shows how easy it is to confuse me on this thing. Next, "R.A.R. (partial) dated 12/22/38 for 1937."

What was that?

A. It was the same type of report, but for the love of me, I can't remember who wrote that one even.

Q. Do you have it?

A. No, sir. We don't have it. If we did, I could

727 tell you who wrote it.

Q. Has that disappeared also?

A. That has, also.

Q. Now the next line, "R.A.R. dated 12/21/40 for 1938 and 1939."

That is Mr. Klein's, isn't it?

A. That is Ned Klein's report.

Q. And we have that?

A. That we have.

Q. Then you have a letter from acting superintendent special agent in charge, dated 2/20/45, with report dated 2/16/45.

Who was that special agent?

A. This was a letter from acting special agent in charge. The special agent in charge at that time was Mr. Madden, but Mr. Madden apparently didn't sign the letter because it is "acting special agent."

Now who was acting special agent on that particular date, I don't know.

I can tell you what the letter was. It is merely a letter forwarding the report of special agent Stains to be 728 associated with my case.

Q. Then the next enclosure is a copy of the 90-day letter to the taxpayer, dated 5/1/45. That describes it, does it?

A. That was not on my report when I submitted it. If you look at the original, you will see a difference.

Q. It is a different typewriter?

A. Yes. This report was apparently held in the office after I submitted it because I believe there was a jeopardy assessment recommended, and this letter went out as a result of that jeopardy. Therefore the report was held until the jeopardy was completed, the jeopardy assessment.

Q. Now that 90-day letter, was based on your report?

A. Exactly. That statement I mentioned earlier is a condensation of my report by year.

Q. And the figures were the same as found by you?

A. The figures for each year were the same. I doubt—I am sure there was no copy of these exhibits attached; merely reference made to the sum totals.

729 Q. Now in your report on page 3, it happens to be underlined in red ink on the original, and I think it shows underlined—

A. It shows on here.

Q. Yes, but it is not red on yours. I will read it to you:

> "The taxpayer was examined for the year 1936 by an office auditor, and he explained the income disclosed on line 1 of the return as being from winnings on the Joe Louis-Max Schmeling fight."

Was that in your report?

A. That statement is. The red lines weren't there when I submitted it.

Q. But the statement was accurate as far as you could discover?

A. Yes, sir. That was the statement that I took off this auditor George's report, who wrote a partial report and abandoned it because there was no change in liability likely. But he made reference to what that sum was, and that was explained in his report as having been received, information received either from the taxpayer or who-
730 ever represented him, I don't know, and it was the winnings on the Louis-Schmeling fight in 1936 in New York City.

That is why I did not give him credit for miscellaneous income in 1936. It is identified as being from another source.

Q. Now the next paragraph:

"The 1938 and 1939 returns were examined by Revenue Agent Ned Klein who established income on the 'Expenditure Basis'. Credit has been given the taxpayer for the amounts whereby his income in those two years was increased with the result that no additional tax is recommended for the year 1939 for Revenue Agent Klein increased the net income to $75,819.28 and the total distributive share allocated to him from the Browne Bioff deal totals only $42,051.93 as shown by Exhibit 'E' of this report."

Now, I am not so sure I understand that, and I want you to help me. This is the same report that we had testimony here about, that Mr. Klein gave us in this case,
731 isn't it?

A. That is correct.

Q. When you found that report in your files, what did you do with reference to making this adjustment?

A. If you will look at page 5 back in the report, Schedule No. 7, I said:

"Net income as disclosed by Revenue Agent report on 12/21/40."

That is the Klein report.

In making my adjustments, I have to take the original return as it has been corrected, either increased or decreased, by a prior examination, and use that as a starting point, and that is the amount of income shown by Mr. Klein's report. I make my adjustments accordingly.

732 Q. I believe I have the place you refer to on page 5, Schedule 7:

"Adjustments to net income year ended December 31, 1938.

"Net income as disclosed by Revenue Agent report 12/21/40, $62,546.72."

A. Right.

Q. "As corrected, $76,624.80.

"Net adjustment as computed below, $14,078.08."

That is what you did, is it?

A. Yes, sir.

Q. Does that mean that instead of charging the taxpayer with all the distributive share at that point, you gave him credit for what Mr. Klein had already increased it?

A. Yes, plus what he reported as miscellaneous income.

Q. That is right.

But at that time, did you know from Mr. Klein's report that the fact was, as Mr. Klein testified here, that Mr. DeLucia told Mr. Klein that the money he was re-
733 porting on at that time was gambling money?

A. Part of it was gambling money.

Q. Yes.

A. That word "gambling" is not used in the sense, in taxpayers of this type, as it is in the sense used in a gambling house where we venture money for gain. That "gambling," the word "gambling" or "speculation" or "speculator" or "miscellaneous income" is used generally by taxpayers who cannot fully disclose their source of their income, or will not disclose.

Q. Mr. Ruggaber, you knew at the time you were making adjustments as much as we know today, that is, Mr. Klein says that it was gambling money, is that right, or has Mr. Klein's testimony added something to your knowledge?

A. Mr. Klein's report, I believe, said a portion was traced to a gambling bet he had won, of quite a bit less than the total he reported.

Q. Well, I will move on. I think I can make the same point I am leading up to at another place here.

734 On page 3 there is a short paragraph that says:

"No fraud penalties are recommended for the years 1940 and 1941 for the reason that adjustments in those two years are merely technical."

Will you explain that?

A. There has been no additional income from this source we are talking about, the movie source. The only adjustments I made for the year 1941, I reduced the earned income credit from the maximum of $1,400 to the minimum of $300.

Q. I want to ask you about that, too, because you seem to be familiar with your report. I noticed it in there.

The ordinary taxpayer at that time would have been entitled to some sort of a credit because his income was earned income, isn't that right?

A. Yes, sir.

Q. And it would have made the difference of about $14,000 to Mr. DeLucia which he had already claimed, isn't that right?

735 A. It is 10 per cent of the earned income. $14,000 maximum, or 10 per cent, is $1,400. It would have meant the difference between $300 and $1,400, or $900 at 4 per cent, or $36 difference in tax.

Q. And you came to the conclusion, because he wouldn't tell you as much as you wanted to know by way of his returns, that you wouldn't call it earned income, isn't that right?

A. I never talked to the gentleman, sir, about this case anyway.

Q. But you did make a conclusion in your report that you would reduce that to the $300?

A. I considered this type of income not earned income.

Q. And that is the reason that you made that reduction?

A. That is correct.

Q. I am going to call your attention to page 2 of your report. You seem to have more than one page 2, so here is the one I am referring to.

A. The first set of numbers goes to the transmittal letter, and the second set goes to the technical re-
736 port.

Q. Is this the technical report we are looking at now?

A. Yes, sir.

Q. Calling your attention to the last paragraph, I will read it:

"The taxpayer omitted from income his share of extortion payments collected by W. Bioff and George Browne, labor leaders, from various moving picture producing and exhibiting companies. Total extortions amounted to $206,406.79 for the year which were divided one-third to Bioff and Browne and two-thirds to Nitto, Campagna and this taxpayer. The two-thirds has been divided equally between the last three individuals and this taxpayer's distributive share totals the amount shown as additional income above. See Exhibit 'A' for details as to the sources and the method of distribution."

You have that paragraph in your report, haven't
737 you?

A. Yes, sir, I have.

738 Q. And I notice you repeated it almost word for word as you concluded each one of these years, that same observation?

A. The same explanation of the change.

Q. Yes.

A. Yes.

Q. Now, the way I read that, Mr. Ruggaber, you were recommending penalties, weren't you, when you made out this report?

A. Yes, sir.

Q. And you gave this as an explanation of your reason for recommending a penalty?

A. Yes, sir.

Q. And your reason was that Mr. DeLucia, having received that money, in your opinion, had just omitted putting it on his return and had not paid his tax on it, wasn't it?

A. That was my basis for it.

Q. And knowing that this would be possible, that you would meet a contest; you have that in mind, don't you, when you are making up your technical report?

A. Well, we never know whether it is going to be contested or not where we don't contact the taxpayer.

739 We did not know.

He may have been sent a statement and it might have been a letter, as it was in this case. As a result of a jeopardy assessment, he could have come in and paid it without contest.

A ninety-day letter doesn't mean there is going to be a petition filed with the court.

Q. You thought it would be safer from your standpoint, from the standpoint of the Government, to go back and give Mr. DeLucia credit where he just put in income as being miscellaneous?

A. What do you mean by the word "safer"? I just would say it was correct.

Q. In a way, you were giving the taxpayer the benefit of any doubt that might arise, isn't that true.

A. I gave him credit for having reported miscellaneous income, which is the type of income ordinarily reported in a situation similar as this.

Q. It is very possible that he reported miscellaneous income that was from other sources, that is, gambling and things, and just didn't report this movie money at all?

740 That is possible, isn't it?

A. That he could have reported other income from other sources?

741 Q. You had to use your judgment. When you saw that "miscellaneous" on Mr. DeLucia's returns, it called upon you to use your judgment to try to figure out whether that included the movie money or whether he had just reported other things like gambling and things and left the movie money out entirely; you had to make
742 a decision on that question, didn't you?

A. I did.

Q. And you made it in the way you have indicated. You gave him credit for having put the movie money into his returns under the heading "Estimated, Miscellaneous"?

A. I gave him credit, which I believed to be the correct thing to do at that time; that he possibly could have reported some of that movie money.

Q. In that way you were giving him the benefit of any doubt that might arise from the ambiguous word "Miscellaneous", isn't that right?

A. If I had not given him consideration, he would have had a greater tax, then.

Q. I understand that. He would have had more money available. That is what we are getting at.

A. I don't know about that. I gave him credit for having reported that income, that miscellaneous income, yes, sir.

Q. You have given the jury here a picture of what you had to go by. That is, you had his returns and you had, where it said, "Miscellaneous" certain sums?

743 A. That is right.

Q. And in order to get at your report, you made up your mind that you would give Mr. DeLucia credit for having put some of these movie moneys into his returns under the heading "Miscellaneous"?

You did that, didn't you?

A. I did that.

By Mr. Barnett: Stipulation No. 4:

It is further agreed between the parties here:

That said Paul DeLucia had a brokerage account with Goodbody & Co., One North LaSalle Street, Chicago,
744 Illinois, during the period January 6, 1940 through February 14, 1941.

That this account was in the name of Paul DeLucia and is identified as Account No. 36-5216.

That through this account Paul DeLucia conducted the following brokerage transactions which are summarized below as follows:

In the year 1939, he purchased stock at a cost of $3,973.21.

In that same year, he sold no stock.

In the year 1940, he purchased stock and expended therefor, the sum of $16,095.

He expended for interest payments, $107.78 in that year.

In the same year, 1940, he sold stock, for which he received $11,585.63 and he received dividends in the amount of $225.

In the year 1941, he expended no money for stock but
745 he expended for interest, $45.47.

746 In the same year, 1941, he sold stock and received therefor, the sum of $6,035.28 and he received in dividends, $112.50.

The details of the above expenditures and receipts are contained in Government's Exhibit No. 25.

747 Stipulation No. 5:

It is further agreed between the parties that on September 1, 1934, Paul DeLucia assumed a mortgage on real property located at Long Beach, Indiana, in the amount of $7,480.00.

That Paul DeLucia made the following payments of principal, interest, insurance and service fees in connection with said mortgage to Great Lakes Mortgage Company.

In the year 1935, he paid to the Great Lakes Mortgage Company, $987.50.

In the year 1936, he paid $929.02.

In the year 1937, he paid $1,001.72.

In the year 1938, he paid $859.35.

In the year 1939, he paid $828.75.

In the year 1940, he paid $876.95.

In the year 1941, he paid $767.55.

In the year 1942, he paid $737.83

748 In the year 1943, he paid $3,548.68.

That the details of the above expenditures are contained in Government's Exhibit No. 26 which I offer in evidence at this time.

749 By Mr. Barnett: Stipulation No. 6.

It is further agreed between the parties that Paul DeLucia purchased the following U. S. Treasury coupon bonds:

For the year 1937, he purchased a bond No. 238-J at a cost of $5,000.

In the year 1943, he purchased bond No. 19077-H in the amount of $5,000 and in that same year, he purchased bond No. 139317-H at a cost of $1,000.

The details of the above expenditures are contained in Government Exhibit No. 27 which I herewith offer in evidence, your Honor.

By The Court: The same ruling for both sides.

(Said document, so offered and received in evidence, was marked Government Exhibit 27.)

809 By Mr. Barnett: Stipulation No. 7.

It is further agreed by and between the parties hereto that Paul DeLucia purchased the following automobiles:

In 1940, a Cadillac at a cost of $1,550 from R. J. Overton;

In 1947, an Oldsmobile at a cost of $2,072.70 from C. B. O'Malley;

In 1947 another Oldsmobile at a cost of $2,572.82, likewise from C. B. O'Malley.

In 1947, also a Cadillac at a cost of $3,410.50 from Emil Denemark & Company, and also, in 1947, another Cadillac at a cost of $3,161.50, likewise from Emil Denemark & Company.

810 In 1950, he purchased a Cadillac at a cost of $4,028 from Emil Denemark & Company.

Details of these expenditures are contained in Government Exhibit No. 28.

Stipulation No. 8.

It is further agreed:

That Paul DeLucia purchased the following lot from Harvey Frier, Inc., president of the Shoreland Hills, Incorporated, Long Beach, Indiana, for $400 in cash.

Lot No. 11, Block F, of Shoreland Beach, purchased on the date of July 13, 1940 at a cost of $400.

Details of this expenditure are contained in Government Exhibit No. 29.

Stipulation No. 9.

It is further agreed:

That Paul DeLucia purchased a certain parcel of real estate, known as Lot 6, Block 12, subdivision of North-
811 woods situated on the corner of Chicago and Lathrop Avenues, River Forest, Illinois, on December 3, 1940, for $2,000;

That Paul DeLucia purchased this property subject to certain tax liens of Cook County, and that Paul DeLucia

retained one Henry H. Marks, attorney, to effect a settlement of these liens in 1941 for a total consideration of $1,650.00.

That Paul DeLucia paid said Marks a fee of $800 in 1941 for services rendered in that connection.

Details of the above expenditures are contained in Government Exhibit No. 30.

Just a couple of more, your Honor.

Stipulation No. 13.

812 It is further agreed:

That Paul DeLucia paid the following real estate taxes on his long Beach, Indiana, residence to the County Collector of LaPorte County, Indiana, in the total amount of $5,088.15 as follows:

And, the years in which the payments are made are 1940 to and including 1950.

I do not intend to read the amounts by year, but the details of this expenditure are contained in Government's Exhibit 34.

Stipulation No. 14.

It is further agreed:

That Paul DeLucia paid the following medical bills to Dr. Morris Lev, M. D., 104 South Michigan Avenue, Chicago, Illinois:

For the period 1941 to and including 1947 he paid a total $1,365.00, the details of which are in Government's Exhibit No. 35.

Stipulation No. 15.

813 It is further agreed:

That Paul DeLucia purchased the following Series E United States War Savings Bonds, none of which were redeemed as of March 5, 1957:

In 1941, for such bonds, he expended $2,250.00.

In 1942 he expended $4,575.00.

In 1943 he expended $75.00.

The details of these expenditures are contained in Government's Exhibit No. 36.

That concludes the stipulations, your Honor, and at this time, I would like to formally offer Government's Exhibits Nos. 28, 29, 30, 34, 35 and 36 in evidence.

By Mr. Green: Your Honor, may the record show Mr. Bulgen's formal objection to the materiality, competence and relevancy?

By The Court: It may so show.

By Mr. Stewart: Your Honor, you remember when we were discussing stipulations I told your Honor and
814 I told Mr. Barnett that we won't question the amounts.

He doesn't need to bring the dealers to show these figures, but, where we know, from the dates, that Mr. DeLucia was in the penitentiary, I will ask Mr. Barnett to produce some evidence to connect Mr. DeLucia with the expenditures and if he fails to do that, I move to strike.

By The Court: You have a right to do that. Let the exhibits be received, subject to that statement; it is not an objection—it is notice. It is obvious that unless you connect those up in some way, these particular items, as of those particular dates, they will be inadmissible. All right.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 28, 29, 30, 34, 35 and 36.)

816 Wednesday May 14, 1958, 10:00 A.M.

817 By The Court: Are you ready to proceed?

By Mr. Barnett: Ready, your Honor.

I would like to bring to your Honor's attention the fact that the newspaper articles seem to be increasing in intensity, and I thought it would be a good idea to advise the jurors not to read the newspaper articles concerning this case.

By The Court: I don't hear any motions from the defendants.

By Mr. Barnett: Well, you have done that at the start, your Honor, but—

By The Court: I have done it, and I will do it again, gladly do it, I mean, but I thought the motion would come from them, and I would be happy to oblige them.

Let me not do it deliberately but with my regular admonition, I am going to throw that in, so there won't be any special emphasis on it.

All right, bring out the jury.

850 STANLEY YAEGER:

Direct Examination by Mr. Barnett.

* * *

I am Vice President of the Oak Park National Bank and have been for twenty years.

* * *

861 Q. Will you describe for us the nature of the trust agreement?

A. Well, this is a land trust in which—it is dated April 8th of 1949, notice trust No. 1932. It refers to property at Lathrop Avenue in River Forest and the beneficial interest is, first, to Nancy DeLucia and Paul DeLucia for the respective lives or the survivor of them.

Second, to Mary, Anthony and Paul DeLucia, Jr., children of Nancy and Paul DeLucia in equal shares or to the survivor of them in fee simple.

862 Q. Now, the date of that document is 1948, is that correct? A. 1948, yes, sir.

Q. And does that refer to the same property that was sold to Mrs. DeLucia in 1938? A. That is the same property.

Q. And you mentioned that it was a land trust. Will you tell us what a land trust is, please? A. Well, a land trust is a trust which banks enter into for the holding of the title for the benefit of beneficiaries.

Q. And did your bank act as the legal holder of that property with the DeLucias, as beneficiaries after this date in 1938? A. We did.

By Mr. Barnett: Your Honor, I will offer Government Exhibit No. 83, the land trust, in evidence.

By Mr. Stewart: Your Honor, our position is the same with reference to this.

Any time your Honor feels like the record should be kept free of all this detail, we are not disputing it if
863 Mr. Barnett would furnish the Court and the jury with the amount of the expenditure. We will be glad to agree to it, and to other matters he seems to have considerable detail on.

I think it would be a good objection to say it is not proper to put the land trust in and the various agreements when all the Court and the jury might be interested in is the amount involved.

By The Court: Well, it places the title. I will let it go in.

(Said document, so offered and received in evidence, was marked Government Exhibit 83.)

By Mr. Barnett:

Q. Now I will hand you Government Exhibit No. 84 for identification and a duplicate thereof, a photostat. Can you identify that document for us, Mr. Yaeger? A. I can.

Q. And will you tell use what it is? A. Well, it is
864 a canceled trust deed and a principal note together with two canceled interest coupons for a mortgage of $30,000.

Q. Is that part of the files of the bank? A. That's right.

Q. Is that mortgage in connection with this property on Lathrop Avenue that you just testified about? A. That's right.

By Mr. Barnett: Your Honor, I will offer Government Exhibit No. 84—that is, I will offer a photostatic copy thereof.

By Mr. Stewart: Our position is the same, your Honor.

By The Court: It may be received in evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit 84.)

945 HUGH GARDEN:

Direct Examination by Mr. Barnett.

Q. What is your business or profession? A. I am an architect.

Q. How long have you been an architect? A. About sixty years.

946 Q. Are you connected with an architectural firm? A. Yes.

Q. What is the name of that firm? A. Schmidt, Garden & Erikson.

Q. Where is the firm located? A. At 104 South Michifan, the Monroe Building.

Q. Mr. Garden, during the year 1934 did you acquire option of some space at the Chicago Centry of Progress? A. Yes, sir.

Q. After acquiring that option for space at the Chicago Century of Progress, what did you do, if anything? A. The first thing was to find the money to build it.

Q. No. Did you draw up some plans? A. I did. That is the reason that they gave me the option. The space was there and they told me—I went down to see the director.

Q. What was the type of plans that you had drawn 947 up, Mr. Garden? A. The Italian Village. It was my

idea of putting it there and they gave me the option.

948 Q. So subsequent to getting the option after having your plans drawn, did you have a meeting with some people? A. Yes.

Q. Was that approximately in the month of January or February, 1934? A. You will have to help me on dates. That is a long time ago. It was about a month before the Fair opened.

Q. It was in the early part of 1934? A. Yes.

Q. Where did the meeting take place? A. It took place in the dining room in a restaurant on Lake Street.

Q. Do you recall the name of the restaurant? A. What? No, I think it is gone. It was about Clark or Dearborn on Lake Street.

Q. Do you recall the persons who were present at that meeting? A. They were all strangers to me at that time, but I met them at this meeting. We were looking to

949 get an Italian group because it was an Italian village that I designed, and we thought we might get the Italian Government, so I or one of my men went to see the consul general, and he said, oh, nothing doing.

Q. All this was before this meeting you are talking about? A. Yes. Well, then people started to come to me because there was talk.

Q. Well, the meeting that you had in the restaurant at Lake Street, who was present at that meeting? A. They were strangers to me, as I just told you, and one of them developed to be Paul Ricca, Paul DeLucia, and another was Serritella, who was an alderman in the City of Chicago, and later I met a great many, you see. Imburgio was one. He was their business man.

Q. Under what name did you meet Mr. DeLucia? A. He was Paul Salvi the first time he was introduced to me.

Q. Now in this meeting, what was the discussion that

was had at the meeting? A. Well, I told him that the
950 reason I proposed it was because the Belgian Village had done such a splendid business, made a small fortune or a big fortune in the previous year. The Fair went for two years, and everybody was chasing it, and here was this lot close to where the Belgian Village was, ran down to the lake, and it presented architectural possibilities, and I decided that an Italian village would be a very fine thing there and would probably make money.

Q. You told all this to this group of men? A. Well, yes. That was the meeting, that was my first interview with those men, who turned out later to be my clients. I introduced the idea of the leaning tower to them, and we built it.

951 Q. Now in response to this statement that you made to the group, what was said to you, Mr. Garden, by these men? A. Well, I told them that they couldn't proceed without me because I had the option, and I thought that it presented possibilities of making money and I wanted to have a share in the stock, in addition to my fees as an architect, and we had a lot of quarrels about that.

952 Q. Did you make a proposal to them? A. Well, they said, "How much do you want?" I said, "Say, 51 per cent of the stock."

Well, they just yelled about that, and finally settled on 15. But, of course, that was in addition to my fee as the architect.

Q. What was your fee as the architect to be? A. I think in that case it was 7-½ per cent of the cost.

Q. Now as a result of this meeting, did you have a number of other meetings with these same men? A. Oh, constantly. Not always the same men. I didn't know them. I kept meeting them, but you see we had about 28 days to build in, and we didn't bother with introductions or anything, just hustled, worked day and night, day and night, the whole gang.

953 Q. Prior to beginning the building, you did reach an agreement as to the terms, is that right? A. Oh, yes.

Q. Then you had 28 days in which to build the exhibit at the Fair? A. And it was done and it was opened on time, and it was almost the only one.

Q. The only one that opened on time? A. Yes. We were a little late, but we had the doors open and the tickets being sold and everybody was happy.

Q. Now, who were the persons with whom you dealt during the construction of the exhibit at the Fair? A. Well, that is a very difficult question. Everybody who had anything to do with it—I was there all day, and most of the night, and my superintendent was there sometimes all night. The gangs worked overtime constantly, and they had to be directed.

Q. Of this group with whom you had this agreement to build the exhibit at the Fair, who was present
954 most of the time? A. Well, I think Imburgio was the business representative. Is that his name? Imburgio Bulger, some of them call him. I met him as Mr. Imburgio.

And Paul—my superintendent said, "You see that little fellow over there?" I said, "Yes."

"He is the boss."

Q. And who was that? A. That was Paul.

Q. Known to you as Paul Salvi at that time? A. Yes.

Q. During the construction of this exhibit at the Fair, Mr. Garden, what arrangements were made for the payment of contractors and for the payment of suppliers of the materials that went into the exhibit? A. The Italians helped all the time and took control in a way of buying materials. The lumber was a tremendous item, and they found the lumberman, made a contract with him. I didn't —I had more than I could do.

Q. The lumberman was one of their suppliers, then? A. Yes.

955 Q. Do you happen to recall the name? A. I think it was Joseph Lumber Company.

956 Q. Now in so far as the contractors that were working on the job was concerned, other than the suppliers, what arrangements were made for paying them? A. Well, you see, that building was a frame construction except for the leaning tower, which was steel, and then the exterior was cast plaster mostly, and that had to look like antique Italian masonry.

I found the men to make it and got their price, and they were paid, like the rest of them. We would issue a certificate to anybody whose work came under our hands—not the lumber, you see—and the certificate would be our standard form: "This is to certify that so-and-so has furnished material and labor and is entitled to a payment of—".

I was the sole judge on those things, and I would call Paul and say, "Well, we have to have some money." He would say, "I will be in tomorrow. How much do you want?"

I would say $18,000.00, or whatever it was, and he
957 would be in, in the morning. I would have the contractor in another room and they never even met,—generally they didn't meet, but of course, on the job they met, everybody met.

Q. The payments were made in cash to you, is that right, Mr. Garden? A. They were made in cash. They weren't made to me. They were laid on the table, and I didn't put them in my bank account or have anything to do with them. I wrote the certificates.

Q. Well, you turned them over to the contractor, is that correct? A. I turned the money over to the contractor.

Q. That is what I mean. A. I had him there to receive it so I wouldn't need to receipt for the money at all. I didn't touch any of it.

Q. With respect to all the payments, they were handled in that manner on the construction of the Italian Vil-
958 lage? A. That was done that way, by us. If they made a different deal on the lumber or something, then they paid it to suit themselves or as they agreed.

Q. But all of the money that passed through your office was received from whom? From whom did you get it? Did you get from Paul Salvi all the money that went through your office? A. Yes. I say yes—he may have sent somebody else, but I think he was there himself nearly always. You see it is a long time you are asking me to recall things that were done when we were in the heat of production and—

Q. I understand. Do you recall the approximate total cost of that exhibit at the World's Fair? A. I forgot it long ago, but it has been recently brought to my attention that what books there are show about $180,000.00.

959 Q. And the fee that your firm received was 7-½ per cent of that sum? A. Yes, but we didn't get anything on the share of the stock. That was a bloomer.

Q. By a share, you mean a share of the stock or a share of the profits? A. Profits, there weren't any.

Q. You received nothing on the share of the profits? A. No, there wasn't any.

Q. What eventually happened to that exhibit at the World's Fair? A. When the Fair was over, they pulled it down.

Q. Financially, what happened to it? A. Oh, financially, yes. When it was evident that it wasn't going to make money, everybody began to disappear, so Mr. Schmidt and I put a lien on the thing.

Q. Mr. Schmidt was your partner? A. Yes, and on the same day the lumberman did the same thing, but without collusion between us.

960 Q. The result was bankruptcy, wasn't it? A. Bankruptcy. It took a couple of years to pay it off, and Paul said to me, when he came to me later with another job, the only thing—

Q. We will come to that later. A. All right. We will drop that.

Q. That finishes up the Italian Village, is that correct?

A. The Italian Village, yes, that is the end of it.

Q. Subsequent to the bankruptcy of the Italian Village, what was your next contact with Paul DeLucia? A. About a year later he called me on the phone and ask if I could come out to his place at Long Beach, that he wanted to build a dining room. I had not heard from him in the meantime. I didn't know whether he was angry at me or not.

961 Q. You had a conversation over the telephone with Mr. DeLucia? A. Yes. He was out there. He said, "Can you make the 12:00 o'clock train?" and I said, "Yes."

"Well," he said, "come out on the train and I will meet you at Michigan City in the car and we will drive out."

I didn't know what kind of a dining room it was, whether it was a public one with a restaurant or what.

Q. Did you go to Michigan City, then, Mr. Garden?

A. Oh, yes, we went right along there.

Q. Did Mr. DeLucia meet you at the train? A. Yes.

Q. And then what happened? A. Well, about the first thing he said to me after "How do you do?" was that receivership was a good thing, it cleaned it all up, and that is all we ever talked about the World's Fair.

983 GAYLEN FREY:

Direct Examination by Mr. Barnett.

I live at Long Beach, Michigan City, Indiana. We have a retail building material and fuel business there. During 1935 we did business with Paul DeLucia under the name of Paul Salvi. We sold him a furnace and a stoker for approximately $1200.

984 Q. How was the stoker paid for? A. That was financed through the National Home Corporation in Chicago—the National Finance Corporation in Chicago, who paid us for the whole job when it was finished and accepted by them, and he, in turn, was to make the payments to them by the month, 36 months.

Q. Did you have a conversation with Mr. DeLucia at the time that you made out this contract for the sale to him on a time basis, for the stoker? A. Yes, surely. Yes.

Q. Did you have a conversation with him concerning his credit standing? A. Yes, we had to, in order to get it financed.

985 Q. And did you record his answers on a piece of paper? A. Yes, I did.

Q. And is Government Exhibit No. 118 your record of the answers given to you by Mr. DeLucia? A. Yes, sir, this is a copy of it.

Q. It is a copy of it? A. Yes.

Q. And is Government Exhibit No. 120 your record of the contract for the time payments on the stoker? A. Well, this is the disbursement sheet. I think there possibly might have been a record, a copy of the contract. This is a disbursement sheet which is sent to us from the National Finance Corporation.

Q. And thereafter the payments are made not to you, but to the finance company, is that correct? A. That is right. Yes.

Q. How much was the cost of that furnace and
986 stoker? A. About $1,200—$1,180 net without the interest.

989 Over a period of four or five months we supplied material for which we were paid in cash as the job
991 progressed. Approximately $7000, usually fairly large size bills.

997 By Mr. Barnett: Government Exhibit No. 118 is captioned "Credit Statement" dated September 5,
998 1935, at Long Beach, Indiana, to Frey Brothers Lumber Company.

"Name of Applicant: Paul DeLucia, Long Beach, Indiana.

"The following information is given for the purpose of inducing you to grant credit under the provisions of Title 1 of the National Housing Act.

"Married or Single:"

And the answer is "Yes."

"Age: 32"—

it looks like.

"Number of Dependents: Three.

"Business References: Sibiline Furniture Company, Miller Market, Lieber Market and Ray Behan, Long Beach.

"Employment or Business: Now employed by self (Ward's Playhouse).

"Business Address: 410 South Michigan Avenue.

"Position Occupied: Vice-President.

999 "How long with present employer: Three years.

"Length of time in present business: Three years.

"Salary, commission—or net profit if in business—per year: $4,500.

"Other income per year: None.

"Total income: $4,500."

1006 *Testimony of Michael Corcillo.*

MICHAEL CORCILLO, testified as follows:

* * * *

Direct Examination by Mr. Barnett.

Q. What is your occupation? A. I am employed by an insurance agency in New York.

* * *

1007 During 1943, did you have any contact with Mr. Paul DeLucia? A. Yes, sir.

Q. And what was that contact? A. I wrote a bail bond.

Q. Will you tell us how that came about? A. I met Mr. Joseph Bulger in New York in the Federal Court, in New York, and he asked me if I would execute some bail bonds for seven defendants, and I did.

Q. Who introduced you to Mr. Bulger? A. I met him in the Federal Court in New York. I believe it was some attorney or some other bondsman that introduced me to Mr. Bulger. I just don't recall who it was.

Q. Did you subsequently, then, meet Mr. DeLucia? A. I met Mr. DeLucia here in Chicago when he executed the bond, for the first time.

1008 Q. When you come to Chicago, after meeting Mr. Bulger in New York? A. Mr. Bulger in New York, yes.

Q. Do you have the bail bond application which was executed by Mr. DeLucia? A. No, sir. It is with the home office of the Manufacturer's Casualty Insurance Company.

Q. I show you what has been marked Government Exhibit 158, a photostatic copy of what purports to be a bail bond application, and ask you if you recognize that as a copy of the bail bond application executed by Mr. DeLucia? A. I do.

Q. Was that signed in your presence, by Mr. DeLucia? A. It was signed here in Mr. Bulger's office, in my presence.

Q. Will you give us the amount of the bail bond which you wrote for Mr. DeLucia? A. Two $50,000 bonds.

1009 Q. A total of $100,000? A. I understand there were two indictments. They wrote $50,000 each, the bonds.

Q. Now, did you receive any collateral for those bail bonds? A. Yes, I did.

Q. Where were you when you received the collateral? A. Well, the collateral was originally with another company, with another surety company, and it was transferred to the Manufacturer's Casualty Insurance Company.

Q. There had been a previous bond written, is that correct? A. I believe it was the American Casualty Company.

1010 Q. But, I say, that had been in existence before you wrote your bond? A. Yes. All the collateral was all deposited with this other company and it was transferred to the Manufacturers Casualty Insurance Company for all defendants, I say.

Q. For companion defendants along with Mr. DeLucia, is that right? A. Yes.

Q. Mr. DeLucia's was two bonds for a total of $100,000.00? A. That is right.

Q. Did you charge a premium for those bonds? A. I did.

Q. What was the amount of the premium? A. A thousand dollars, each bond.

Q. That is, a thousand on each of the two fifty-thousand dollar bonds? A. A thousand dollars each for each $50,000.00 bonds.

Q. So, the premiums of Mr. DeLucia's bonds were $2000.00 altogether? A. Two thousand altogether.

Q. Did you receive payment of that premium?
1011 A. I did.

Q. Where did you receive payment of it? A. I got paid from Joseph I. Bulger.

Q. When and where did you get paid by him? A. I got paid here in Chicago. The date, I don't recall now.

Q. That is the Government's Exhibit 158 (indicating). Perhaps it will help you establish the date. A. I got paid after the bonds were executed, after the execution of the bail bonds.

Q. How long after the application for bail bond was executed by Mr. DeLucia was the bond issued? A. How long—I don't get it.

Q. How long after he applied for the bond was the bond issued? How long did it take to issue the bond after he applied for it? A. I don't recall now.

Q. Well, approximately. A. Maybe a week.

Q. Now, by reference to the date on the application for the bail bond, are you in a position to tell us when the bond was issued? A. Yes. The bond was is-
1012 sued—the bonds were executed on June 28, 1943. June 28th.

Q. What is that record you have reference to, Mr. Corcillo? A. This is a bookkeeping record that we have in our office.

Q. Is that the date on which you received payment of the premium? A. No. I probably received it a week or so later. I just don't recall just exactly what date it was.

Q. But, it was in June of 1943? A. But, I was in Chicago and I got paid here.

Q. About a week after the issuance of the bonds? A. About a week, maybe less.

Q. But it all happened in 1943? A. Yes.

Q. Now, did you have any further dealings in connection with Mr. DeLucia? A. I wrote a civil bond.

Q. Will you explain to us what you mean by "civil bond"? A. A civil bond was posted in New York after they were convicted, after the defendants were con-

1013 victed.

Q. What is a civil bond? A. It is a bond to guarantee—guaranteeing the fine.

Q. I see. A. The amount of the fine.

Q. I see. You wrote that civil bond, too? A. I executed a bond, yes.

Q. In connection with Mr. DeLucia, how much was the civil bond? A. $10,000.00.

Q. Did you receive any security for that bond? A. I did.

Q. From whom did you receive it? A. From Mr. Joseph I. Bulger.

Q. And what form was the security in? A. In cash.

Q. When did you receive it from Mr. Bulger? A. On January 17th, 1944.

Q. And the conviction was in December, 1943. A. Well, it could have been 1942. 1943 is when I executed the civil bond.

1014 Q. The bail bonds? A. I am trying to find the year on this sheet. The civil bonds were executed January 5, 1944.

Q. Did you receive a premium for the civil bonds? A. I did.

Q. What was the premium on the bond written for Paul DeLucia? A. $75.00.

1015 From whom did you receive that? A. Mr. Bulger.

Q. Now, did you have anything further to do with this transaction? A. No, sir.

Q. Was the fine ever paid? A. It was paid by the insurance company.

Q. Did you have anything to do with that transaction? A. No. The company itself paid it. The company sent the check to the Government, the United States Government, for the fine.

Q. And did you have anything to do with releasing the bonds to pay the fine? A. No.

Q. I beg your pardon? A. The bonds were never released. The Government asked the company to make payment on the bonds and they paid it on a collateral.

Q. I hand you what has been marked Government Exhibit No. 159 for identification and ask you if you can identify that document. A. I do.

1016 Q. What is it? A. It is a collateral receipt given to Mr. Joseph I. Bulger for the collateral on the civil bonds, $60,000.

Q. That is a receipt given by you to Mr. Bulger? A. No, sir, it wasn't given—it was given by the Manufacturer's Casualty Insurance Company. This is a collateral receipt. It was given by the insurance company to Mr. Bulger.

Q. Yes. A. For the amount that he deposited as collateral.

Q. And then, did he give that to you? A. This was given by my office to Mr. Bulger.

Q. Given by you to Mr. Bulger? A. No; by the girl in my office, who was in charge of the collateral.

Q. Did you collect the collateral? Did you collect the collateral for those bonds? A. The money was brought into my office, yes.

Q. By whom? A. By Mr. Bulger.

Q. And this took place in January, 1944? A. January 17, 1944.

1017 Q. This is the bail bond collateral, is it not—I mean, the civil bond? A. The civil bonds, the collateral for the civil bonds.

Q. That was written on January 5, 1943? A. That is right.

Q. When was the collateral brought in? A. On the 17th of January.

Q. Subsequent to the writing of the bond? A. That's right.

Q. And all of that money was brought in by Mr. Bulger, is that right? A. That is right.

Q. Was it in currency? A. It was.

Q. And the total of $60,000 was brought in? A. Yes, sir.

Q. $10,000 of which was collateral for Mr. DeLucia's bond? A. He was one of the defendants, yes,—$10,000 for Mr. DeLucia.

Testimony of Bradley Eben.

BRADLEY EBEN, testified as follows:

Direct Examination by Mr. Barnett.

1048 I am an attorney at law and a proctor in admiralty. During 1943 I represented Paul DeLucia and others.

• • • •

1052 Q. Did you have any discussion about your fee? A. Yes, we did.

Q. What was the discussion? A. The amount?

Q. What was said, and by whom? A. We subsequently arrived at a fee of $15,000 with a bonus for success, which we never earned.

Q. Were you paid that fee? A. Yes, I was.

Q. What were the circumstances under which you were paid the fee? A. I was paid it on two occasions, as I recall. A group of the men came in—when I say "the men," I am referring to the same six whose names I mentioned before—and they paid me in my office. I have forgotten the exact division of the $15,000.

Q. There were two payments constituting a total of $15,000? A. As I recall, there were two payments, yes.

Q. By check or in currency? A. In currency.

1053 Q. Was that shortly after you were retained? A. Yes.

Q. Then all of this took place prior to the summer of 1943, is that correct? A. That is correct.

* * * *

1063 *Testimony of Thomas N. Smith.*

THOMAS N. SMITH, testified as follows:

Direct Examination by Mr. Barnett.

1064 Q. What is your occupation? A. Chief Deputy Sheriff, Cook County, Illinois.

Q. How long have you been in that position? A. Since March of 1957.

Q. Prior to that, what was your occupation? A. Special Agent, Group Supervisor, Intelligence Division, Internal Revenue Service.

Q. Directing your attention, Mr. Smith, to February 2, 1956, did you have a conversation with Mr. DeLucia in Miami, Florida, concerning payment of fees, attorney fees? A. I did.

Q. Where did that conversation take place? A. The conversation took place in a restaurant in Miami Beach, Florida.

Q. Do you know where Mr. DeLucia lived in Florida? A. I believe it is 4300 Pine Tree Drive, Miami Beach.

Q. Do you remember the name of the restaurant? A. No, I don't.

1065 Q. Do you remember how far away from Mr. DeLucia's house it was? A. Oh, two or three miles.

1066 Q. Will you tell us what Mr. DeLucia told you with respect to the payment of attorney's fees with respect to the extortion trial? A. Mr. DeLucia stated to me that he had paid some $25,000 in to a common defense fund which was handled by Mrs. Charlotte Campagna, for the purpose of paying attorney's fees in regards to the extortion matter and the subsequent litigation pertaining thereto.

By Mr. Barnett: No further questions.

By Mr. Stewart: Your Honor, I would like to cross examine Mr. Smith. The record will show that he was one of the agents present on September 1, 1954.

As a matter of fact, he was in charge when an interview was had in his office and the Government has alleged that interview was one of the overt acts.

Now, I want to obtain the view of your Honor as to whether or not that would be cross examination now or at such time as the Government puts in that overt act.

1067 By The Court: I am not familiar with what you mean by an "overt act."

By Mr. Barnett: Well, in the conspiracy, your Honor—

By The Court: I assume you are going to put in the entire case?

By Mr. Barnett: We are going to put in the entire case.

By The Court: Then you may reserve your cross examination.

By Mr. Stewart: I think I prefer to do that.

By The Court: I cannot advise you. I am not familiar with the overt act phase of it.

By Mr. Barnett: I may say this, your Honor: The overt act he is referring to—there were three persons from the Internal Revenue Service present at the time.

We haven't come to that point in our case where we intend to put that in evidence. We will, very shortly, but not today.

1068 However, if Mr. Stewart wants to talk to Mr. Smith again, he will always be available for him.

By The Court: You may cross examine him, subject to any objection you want to raise later.

By Mr. Stewart: I would like to reserve it to the end and do it all at once, do it after we have before the jury the transcript.

By The Court: I must familiarize myself with the overt act phase of it.

By Mr. Stewart: That will be in evidence, I understand. Mr. Barnett and I can agree on it.

By Mr. Barnett: Wait a minute.

As I see it right now, I have finished his direct examination. There is nothing about the overt act, as yet. If there is nothing about the overt act, this witness, at this point, would be beyond the scope, on that particular point.

1069 By Mr. Stewart: That is the reason I spoke to the Judge about it. I recognize that rule of law and I would rather cross examine him at the time that we have before the Court and the jury the transcript of what was said in his presence.

By The Court: Let us go into my chambers, and I will discuss it with you.

A ten minute recess, ladies and gentlemen of the jury.

(Thereupon the jury was excused, and the following further proceedings were had and taken in open court outside of the presence and hearing of the jury:)

By Mr. Barnett: Maybe I can clear this up very shortly.

By The Court: What is meant by an overt act?

By Mr. Barnett: He is referring to the occasion when Mr. Stewart, Mr. Bernstein, and Mr. DeLucia ap-

1070 peared in the Internal Revenue Service and talked to Mr. Smith, Mr. Scholz, and Mr. Stonesifer, and, at

that time, made statements concering the fact that they were going to stand on Mr. DeLucia's testimony before the Kefauver Committee, that he had $300,000 on hand at the beginning of 1948.

But, what I meant to point out to your Honor is this:

1071 I have no objection to Mr. Stewart reserving that cross examination that he may have with respect to Mr. Smith. Right now, if he starts to cross examine him about those overt acts, I say it is beyond the scope of the direct testimony of Mr. Smith and, therefore, he should not be entitled to cross examine him on that point, at least at this time.

If he wants to call Mr. Smith as his witness, that is another matter.

I have not put in any evidence concerning that particular portion of it, as yet. If your Honor rules he may cross examine him on that point, I have no objection to his reserving his cross examination and taking it at the time, at such time as he cares to, later.

By The Court: I still don't know what is meant by an overt act. I am not familiar with the overt act phase of it.

1072 By Mr. Barnett: It is alleged as an overt act in the indictment in the conspiracy count, but it is also alleged in the general substantive counts of the indictment as being one of the means by which Mr. DeLucia attempted to evade and defeat his income taxes during the years 1948, 1949 and 1950.

By Mr. Stewart: May I add this, your Honor: I don't see any dispute in the law that has been mentioned by Mr. Barnett.

Over in the State court your Honor tried a number of conspiracy cases and there is a difference between the State law and the Federal law.

By The Court: That is what I want to get.

By Mr. Stewart: All right. Here is the difference: In the State courts, the grand jury indictment only needs to allege the existence of a conspiracy and the court instructs the jury that if the parties meet, conspire,
1073 or, if there is evidence of a conspiracy, the crime has been committed, whether anything has been done or not.

Over in the Federal court, the rule is a little different. The conspiracy—just arriving at the meeting stage and the agreement, that wouldn't be enough. The Federal law requires that somebody in that conspiracy do something toward the accomplishment of the conspiracy and that is called an overt act.

That is a necessary ingredient in the case and it must be alleged in the indictment and it must be proved.

Now, they have two overt acts in this indictment and, as has been said here, they also refer to the false statements in the body of two other counts.

Now, we know something about how our case might develop and I spoke to the prosecutor and I think we are going to be in agreement concerning a transcript
1074 that was made of that September 1st meeting at which Mr. Smith was present.

Now, it is rather important that we cross examine Mr. Smith on that and I recognize the fact that if I had started to do that, I might be met with the objection that Mr. Smith, as yet, has said nothing about that.

So, I would like to reserve cross examination and have your Honor instruct the witness to stay subject to call and when we ask for him back, we would like to have him back.

That is the situation.

By Mr. Barnett: And I have no objection to this, your Honor, with the understanding that my objection to his cross examination on that phase is, he is not entitled to

go into that until and unless Mr. Smith testifies concerning that.

By The Court: Then we will reserve his right to cross examine him.

Now, I understand the difference. All right.

1076 By Mr. Stewart: Before you bring the jury in, Judge, I have a motion.

By The Court: All right, Mr. Stewart.

My Mr. Stewart: Your Honor, you remember that before the trial started I made a showing with Mr. Bernstein and produced books of the taxpayer, Mr. DeLucia, and I wanted them turned in to the Clerk for safekeeping; and your Honor accorded with that request.

The Clerk now tells me that the Government has had them for a while and they have returned them. Now we would like to have them over this weekend, and the Clerk suggested that I let the record show.

By The Court: You may have them.

By Mr. Stewart: All right. That will do for that.

Now we would like any statements or reports that have been made by Mr. Smith in advance of the time of ex-

1077 amining him. Will your Honor direct the prosecutor to make those statements available to us, please?

By The Court: Written reports?

By Mr. Stewart: Any reports that he has.

By Mr. Barnett: Your Honor, I will turn over to the prosecution a report concerning—

By The Court: Defense, you mean?

By Mr. Barnett: Report of events to which Mr. Smith has testified.

By The Court: You do mean the defense?

By Mr. Barnett: Pardon me. Yes.

By The Court: You will turn over to the defense what?

By Mr. Barnett: I will turn over to the defendants the

report that Mr. Smith rendered with respect to the events to which he testified.

By Mr. Stewart: I think it ought to be broader than that, in order to save time, your Honor.

He is a witness to the overt act, and we would
1078 like to have them in advance so that we can be familiar with them.

The law entitles us to that, your Honor. You will remember in the Jencks case, the Supreme Court said that it is the duty of the prosecutor to do justice—

By The Court: Once he takes the stand, I think they are entitled not only to what he testified to, but anything that might have a tendency to impeach him, and any other statement, I think they would be entitled to it.

By Mr. Barnett: As I understand, the motion is made under the Jencks law, Section 3500 of the Criminal Code. As I understand the Jencks law, they are entitled to a statement, any written statement of the witness, touching upon the matters to which he has testified.

By The Court: It doesn't say that.

By Mr. Barnett: I beg your pardon?

By The Court: I don't think the Jencks case says that.

1079 By Mr. Barnett: I am talking about Section 3500 of the Code, which is a codification of the Jencks case.

By The Court: Not just what he testified to, but any witness who once submits himself to the processes of the court, the defense becomes entitled to a complete statement.

By Mr. Barnett: The complete statement, yes, your Honor, but not every report that the man has ever written.

By The Court: No. But I mean about this case—read the section.

By Mr. Barnett: Section B: (Reading)

1080 By The Court: You are not reading from the Jencks case?

By Mr. Barnett: Section 3500 of the code, which is the codification of the Jencks case.

By The Court: All right.

By Mr. Barnett: It was the section of the Code that was enacted after the Jencks case came down: (Reading)

* * *

1081 By The Court: All right, deliver the statement. If it has anything to do with the trial of this case, I think they are entitled to it, and it would be error to exclude it.

By Mr. Barnett: May I continue?

By The Court: I will be glad to look at it for you, and to hold to the limitations.

By Mr. Barnett: I think we ought to have it clear what the defendants are asking for. I have a memorandum—

By The Court: They are asking for any statement that you have from the witness who just testified that covers the alleged conspiracy or the overt act.

By Mr. Stewart: That is right, that pertains to this case. We don't see any harm, if the prosecutor wishes to hand them to your Honor first; why, that will be all right with us.

1082 By The Court: I want to protect the Government by excluding anything in the statement that has no bearing on his testimony. But I also have in mind anything that may have a tendency to authorize impeachment from the statement becomes an admissible part of the record.

By Mr. Stewart: May we cross the bridges as we come to them? That is, I see no harm in the prosecutor submitting the statement to your Honor. Then if your Honor gives them all to us, there is nothing to complain about. If your Honor makes up your mind that you are going to hold some, then we are going to complain.

1083 —By The Court: I will discuss them with you. All right, I will be glad to talk to you about it and see the statement first.

By Mr. Barnett: Your Honor, as I understand this now, this man has testified to a conversation and he has made a memorandum of that conversation, which I will be glad to turn over to the defendants.

By The Court: Suppose you have in your files—I am not talking about this case, I am talking about the Jencks case. The courts have had a lot of reversals, is that right?

By Mr. Barnett: It hasn't been on the books long enough for that, your Honor.

By The Court: Yes, but in the lower courts we have had a lot of headaches with it because we didn't know just how far to go with it.

Is that right?

By Mr. Barnett: There have been a number of decisions—

By The Court: And courts have given new trials
1084 to defendants because of error in not following the Jencks policy.

By Mr. Barnett: I can only recall—

By The Court: As I understand the Jencks case, they can't confine the statement merely to the isolated testimony that the defendant said that he contributed $25,000 to a fund, if there is something else in the statement that may have a tendency to impeach that.

By Mr. Barnett: If there is something in the statement—

By The Court: He has a right to look at it. If it has nothing to do with it, they have no right to look at it.

By Mr. Stewart: The Jencks case goes still farther. It is the job of the defense counsel to determine what has value or does not have value, and it is not the job of the judge or the prosecutor, and we must see the statement before we can make up our mind what part we want to use.

Suppose we leave it this way. I see no harm in the
1085 prosecutor turning over to your Honor all the statements he has, and your Honor will let us know which ones he has.

Would that be all right?

By Mr. Barnett: May I correct something Mr. Stewart has said? He says by rights the defendants have a right to go through our files and determine what they can use.

By The Court: I disagree with that.

By Mr. Barnett: That is the reason Section 3500 was put on our books.

By The Court: I think I have discretionary power to determine which part of the statement they are entitled to see to help them present their defense properly and legally.

By Mr. Barnett: All right, your Honor.

By The Court: Nothing that has no reference or bearing upon the issues.

By Mr. Stewart: And when you look at the statement, you will see why Mr. Barnett doesn't want to give it
1086 to us, I assure you that.

By The Court: I haven't the slightest notion about it.

By Mr. Barnett: I have no objection to giving it to him, your Honor.

By Mr. Stewart: Then why don't we have it?

By Mr. Barnett: I don't know what you are talking about when you say that.

By Mr. Stewart: All right, leave it that way.

By The Court: Call out the jury.

By Mr. Barnett: Your Honor, Mr. Stewart is talking about taking the books over the weekend. Is it all right if we have them tonight and tomorrow?

By Mr. Stewart: We would like to have them tomorrow. But you have the laboring oar. I think you should have precedence.

By The Court: Mr. Barnett, you said something about taking a day off?

By Mr. Barnett: Friday.

By The Court: To consolidate your gains or losses, if any.

1088 By Mr. Stewart: I think Mr. Barnett should have
1089 precedence over us. I didn't know that he wanted the books, and if he wants them, I think it will be all right for the Clerk to give them to him.

Testimony of Timothy Dunne.

1090 TIMOTHY DUNNE, testified:

Direct Examination by Mr. Barnett.

I am an insurance broker and have been for thirty-eight years. As manager for the bond department of American Casualty Company I wrote a bail bond for Paul De
1091 Lucia among others. I was introduced to Mr. Joseph Bulger the attorney.

1092 Q. Did you have a meeting with Mr. DeLucia?

A. I never saw any of the defendant until after the bonds were all executed that I recall. They may have been there, but I didn't know them.

1093 Q. Did you, in Mr. Bulger's office, receive any collateral for the bonds? A. In Mr. Bulger's office, yes.

Q. From whom did you receive the collateral? A. From Mr. Bulger.

Q. What was the amount? A. Full collateral for five of the defendants, two bonds of $50,000 each. That is $500,000.

Q. $500,000 in collateral? A. In various amounts, yes.

Q. What was the form? A. All forms, cash, Government bonds, cashier's checks, certified checks. I don't recall the decision now.

Q. Did you get it all at one time? A. No.

Q. Over a period of days? A. Probably a week.

Q. And this took place when? What month of 1943?

A. I believe it was March.

Q. Did you charge a premium on the bonds? A. Certainly.

1094 Q. What was the amount of the premium? A. 2 per cent on the amount of the bonds.

Q. And the amount of the bonds, the face value, was how much? A. That was $100,000 for each defendant. That is $2,000 for each defendant.

Q. And you started out with five defendants, is that right? A. Yes.

Q. Were any additional defendants added later? A. There were two defendants added later, but we took no additional collateral.

Q. Did you receive a premium for the additional two?

A. Yes.

Q. So your collateral remained at $500,000? A. Right.

Q. Was Paul DeLucia one of the original defendants, one of the original five? A. Yes.

Q. From whom did you receive the premium on the bonds? A. The premium was paid direct to the

1095 agency that represented us at that time.

Q. It was not paid to you? A. No. I don't recall that I got it. No, I don't believe I even saw it.

Q. But the premium was $2,000 per defendant, is that right? A. Yes.

Q. How long did your bonds remain in force? A. My recollection is September of the same year.

Q. September of 1943? A. Yes.

Q. What happened then? A. I don't know what happened to the collateral, but I believe it was transferred to New York.

Q. What happened to your bonds? A. Our bonds were canceled.

Q. And the new bonding company took over? A. A new bonding company took over.

Q. And the collateral was transferred to them? A. I believe it was. I never saw the collateral after I took it.

Testimony of Raymond Ratajak.

RAYMOND RATAJAK, testified:

Direct Examination by Mr. Barnett.

1124 I am Vice President of the Forest National Bank. Exhibit No. 145 shows a loan made by the bank to Paul DeLucia March 30, 1948 for $11,000 which remained in existence until March 27, 1951.

Testimony of John Maloney.

JOHN MALONEY, testified:

Direct Examination by Mr. Barnett.

1139 On June 9, 1945 I was employed by the Internal Revenue Service. I had under my control warrants for restraint in connection with Paul DeLucia, Nancy DeLucia and other taxpayers. I took a statement from Nancy

DeLucia which is here in the form of a transcript, Government Exhibit No. 151.

1154 Monday, May 19, 1958, 10 A. M.

1155 By The Court: Shall I send for the jury, gentlemen?

By Mr. Barnett: Not yet, if your Honor please.

Your Honor, Friday I was asked to prepare some documents relating to the testimony of the witness Thomas Smith.

I have segregated the documents into those which we are willing to produce and those which we are not.

It might be well for us to have a discussion in chambers about this, your Honor, about these particular documents.

By The Court: Yes, sure. Do you want to come in?

(Whereupon the following proceedings were had in chambers, out of the presence and hearing of the jury:)

By Mr. Barnett: Your Honor, I have here a memorandum prepared by the witness Thomas Smith of a conversation, that is, containing within it remarks about a conversation had with the defendant DeLucia on February 2, 1956.

This memorandum is dated February 28, 1956.

1156 I do not believe that it comes within the provisions of the Jencks Act because it is not contemporaneous. However, I have no objection to the defendants having this memorandum since it does bear directly upon the testimony that he gave from the stand.

In addition to that document, your Honor, I have a series of documents which were signed by the witness Thomas Smith.

The first of these is a memorandum dated December 19, 1952 from Mr. Smith to the Director of Internal Revenue at Chicago, Illinois, concerning a request made upon him by an FBI agent for certain material in the case.

I can see absolutely no provision for that coming to their attention under the Jencks law.

1157 The next document that I have is a document dated January 20, 1954, signed by Thomas Smith, relating to a conference with then United State's District Attorney Irwin D. Cohen, in which some subject matter concerning the case is mentioned.

I see no bearing under the Jencks law in connection with the testimony of Thomas Smith on the stand, in connection with this document.

The next document which I have, your Honor, is dated August 23, 1954, signed by Thomas Smith, and relates to to a conversation between Smith and others with the witness Ned Klein.

I can see no relevancy to the witness Smith's testimony on the stand in connection with this document.

The next document is a document dated September 22, 1954. It is addressed to R. F. Munsford, Chief of the Intelligence Division, signed by T. N. Smith, and is entitled, "A Review Memorandum," in which Mr. Smith eval-

1158 uates the then available evidence in the income tax file concerning Paul DeLucia.

It has no bearing whatsoever on the subsequent conversation that he had with Mr. DeLucia in 1956, and I cannot see how it is possibly relevant under the Jencks Act.

1159. The next document which I have is document dated September 24, 1954, and it is addressed to Mr. Lunsford, by Smith, and points out certain minor differences between the printed transcript of the hearing on September 1, 1954, which printed transcript was furnished by Mr. Stewart to the Government.

That is, the differences between that printed transcript and the typewritten transcript of the Government's stenographer. There are very minor differences, your Honor. I am sure the defendants know that.

On principle, I don't think this comes under the Jencks Act.

The next document I have is one dated February 17, 1955, signed by Mr. Smith. It is addressed to his chief and it has, too, an interoffice memorandum from the Assistant Regional Commissioner concerning interoffice procedure in the matter. It has nothing to do with any
1160 conversations had by Mr. Smith and Mr. DeLucia. I don't believe it is relevant under Jencks.

The last document I have in the file is one dated March 13, 1957, which is a memorandum signed by Smith and it is addressed to "Special Agent Paul Mahon" and, in this document, in this affidavit, rather, Mr. Smith clarifies what he thought Mr. DeLucia was referring to in the conversation which he had with him on February 2, 1956.

By The Court: The one testified to?

By Mr. Barnett: The one testified to. Now, I shall clarify this memorandum. He is giving his subjective impression of what Mr. DeLucia intended to convey to him. It is by no means a substantially verbatim and contemporaneous memorandum of the conversations he had, to which he testified on the stand.

By The Court: Do you think it might have a tendency to impeach what he did say?

By Mr. Barnett: I don't think it would have a ten-
1161 dency to impeach what he did say at all.

I have no objection to your Honor examining it I actually don't object to the defendants having it. On principle, I say it is not covered by the Jencks Act.

By The Court: I think we should first mark this one. What do you want to mark it?

By Mr. Barnett: You mean an exhibit number?

By The Court: As of today.

By Mr. Barnett: We might mark it exhibit A.

By The Court: I don't care. You are not offering it. I want to mark it, to have it marked and identified.

By Mr. Barnett: This is the memorandum of Thomas Smith.

By The Court: This is the memorandum of "In re witness Thomas E. Smith," statement which the Government will turn over to the defense.

It is now being offered to Mr. Scott Stewart and other counsel for the defendants.

1162 By Mr. Stewart: It is being taken by us and we will look it over.

Note: The exhibits furnished the defense at this point are as follows:

February 28, 1956
ID:FR:TNS:yms

R. F. Lunsford, Chief, Intelligence Division
Thomas N. Smith, Group Superivisor
SI-45658-FR
Paul DeLucia

On Thursday, February 2, 1956, at about 12:30 p.m., I interviewed the above subject at his home located in the 4300 block on Pine Tree Drive, Miami Beach, Florida. Mr. DeLucia answered the door and I identified myself. He stated that he would like to have me come into the house but that his mentally disturbed son was there and would appreciate it if he could talk some place else. We got into the government's car and drove to a restaurant in Miami Beach. The exact location of which I am not familiar. I informed Mr. DeLucia that I was interested in knowing the fees he has paid Attorney William Scott Stewart over the years. Mr. DeLucia replied that he had been contacted by Mr. Stewart and informed that he (Mr. Stewart) was being investigated and that it was very likely that agents

would contact Mr. DeLucia for this purpose. Mr. DeLucia stated that Mr. Stewart advised him to refuse to talk to government agents. Mr. DeLucia further stated that he had had all the trouble that he wanted with the government and asked my advice as to whether or not he should discuss this matter.

I informed Mr. DeLucia that it was not the government policy to advise him in such matters but stated that in the event that he refused to discuss this matter with me a Commissioner's Summons would be issued inasmuch as he was considered as a third party witness in this investigation. He requested information as to what would happen in the event he did not comply with the Summons and I informed him that failure to comply with the Commissioner's Summons would subject him to District Court action for the purpose of having the Court determine whether or not he would be required to comply.

Mr. DeLucia made the remark that if that were so he would be subjected to considerable publicity which he wanted to avoid. He stated that under the circumstances he would be only too happy to answer any questions that I put to him. I then asked Mr. DeLucia how much he had paid Mr. Stewart from the time that Mr. Stewart started to represent him. Mr. DeLucia stated that he remembered a $500 fee paid to him sometime in 1946 or 1947. He further stated all other fees paid to Mr. Stewart concerning the extortion trial and litigation which followed were handled by Mrs. Charlotte Campagna. He stated that on three occasions he had given Charlotte Campagna money in the form of cash for this purpose, in the amounts of $10,000, $5,000 and $10,000 and that he did not recall exactly when this money was given to her. He stated that all the parties involved gave money to Mrs. Campagna to pay the lawyers and it was his understanding that they were

paid but that he has no knowledge as to how much each individual lawyer involved in the case or cases received. (As the record shows there were five or six attorneys involved in this litigation, including Mr. Dillon of St. Louis.)

I inquired of Mr. DeLucia as to the fees paid Mr. Stewart pertaining to his income tax matters, the litigation pertaining to violation of his parole and the matter pertaining before the Immigration Department. Mr. DeLucia stated that the matter pertaining to violation of the parole was handled out of the funds given to Mrs. Campagna; that as to his income tax and immigration troubles Mr. Stewart has not received any fees as yet, inasmuch as these matters are still pending.

I inquired of Mr. DeLucia as to whether or not he had any records available which would refresh his memory as to dates and amounts. He stated that he would look.

This interview lasted about an hour and one-half at which time I drove Mr. DeLucia from the restaurant back to his home. A matter of four or five blocks. I made arrangements with Mr. DeLucia to see him on Saturday February 11 for the purpose of seeing whether or not he had been able to find any records. Because of the postponement of the Esserman case, I was unable to see Mr. DeLucia until Monday, February 13, at which time he informed me that he was unable to locate any records pertaining to these transactions.

This memorandum should be referred to Special Agent Barron for its association with the William Scott Stewart case.

Thomas N. Smith
Thomas N. Smith
Group Supervisor

1162 Mr. Stewart: Are you through with your number of documents there?

By Mr. Barnett: I am through, your Honor, so far as identifying these documents is concerned.

I think I have stated my position with respect to how we feel about this.

In so far as the law is concerned, if your Honor wishes to hear from me further, or from Mr. Stewart—

By The Court: I would like to hear what the law is, respectively, the Jencks Act.

By Mr. Stewart: Who would you like to have talk first, me?

By The Court: Yes.

By Mr. Stewart: As I understand it, before the Jencks case, a practice grew up which was accepted by prosecutors and defense lawyers and judges and the situation was pretty much the same as Mr. Barnett is adopting here
1163 and that is, the Government would object to disclosing documents. Whereas, in the Jencks case, the Government had the point, the Government wanted to keep security, and the statements asked for by the defense counsel happened to be the statements given by people who claimed to have gone to meetings of Communists and had been Communists themselves and the Government was desirous of keeping the information from the defense entirely, so the judges adopted a practice of looking at the material and then telling the defense counsel what the judge thought would be useful on the trial and, what the judge thought was not useful, the judge would deny.

And, I believe in that case, that was rather famous on wire tapping in the east—some girl worked for the Government.

The judge, in order to allow the upper courts to review his action, sealed up the matter that the prosecutor didn't want published or turned over to the defense, and

then the upper court had a chance to see whether the judge was right or wrong and they said the judge was wrong.

And then, along came the Jencks case and the Supreme Court went a step further and the Supreme Court said that the judge is not in a position to know what is useful to the defense; that the defense is entitled to it because they have prepared their case and they know what they can use and what they can't use.

You see, there is a great deal of difference between giving it to us to look at and how much we can get of it before the jury, because, after all, when we ask the questions, that is under the jurisdiction of the Court.

But, my notion of the Jencks case is we are entitled to this and the moment the prosecutor takes the position that your Honor should look at it and see whether we are entitled to it, he is reverting back to what was done before the Jencks decisions.

Just to make ourselves clear and in order to preserve our point, it is up to your Honor, now. You have a great deal of discretion, also. But, I will say this: Mr. Barnett has said enough about those records now to make it look like we are entitled to them.

If your Honor doesn't think we are entitled to them, I ask that you seal them up and mark them so they can be identified, so we can have a complaint, if the time comes that we do have a complaint, that your Honor abused discretion by not allowing us to have them. I suggest your Honor will probably have to read through them before you can make an intelligent ruling.

By The Court: All right. Mr. Barnett, find the Jencks case.

By Mr. Barnett: I beg your pardon?

By The Court: You were talking about the Jencks case. Will you find it?

By Mr. Barnett: We are not operating under the Jencks case. We are operating under Section 3500
1166 of the Criminal Code, which is a codification of the Jencks case.

I have here the case of United States *v.* Papworth, 156 Fed. Supp., page 842. It gives a rather comprehensive history of the Jencks case itself, the treatment of the Jencks case by Congress when they were enacting legislation, and the problems that arose in the case with respect to what the Jencks case did and what, as a result of it, had happened.

Among those things, I would like to point out this: In the Congressional Record, they mention that few cases have been subject to such varying interpretations and popular misunderstanding as the Jencks case. United States Senate Report No. 981, August 15, 1957; United States Code, Congressional Administrative News, page 1861 and 1870 discloses some of the interpretations. I won't give all of them. I will give examples.

One of them is an interpretation whereby the de-
1167 fendant asked the United States Attorney to send him the complete Government file so that he could examine it at a convenient place.

And, in another case, the United States Circuit Court of Appeals, in the Rosenburg case in 245 F. 2d, 870, reversed because of the fact that the grand jury testimony of a witness had not been turned over to the defendant.

Now, Congress was aware of these things and it was because of these things, that they considered gross misapplications of the Jencks case, that they proceeded to enact the Jencks Act itself and that is treated historically in this Papworth case.

1168 Now in so far as the Jencks statute is concerned, that is set out in the body of the case here.

In the footnote at page 850, it states: * * * (reading)

1169 The Court shall excise that part which is not relevant and turn over the balance, but the whole discretion is in the Court. He is the one that now, instead of the defendants, have a first crack at it. He is the one that runs the risk of the discretionary excising of the various parts.

Then the case, the Papworth case, makes mention of a decision which was handed down by Judge Moore at 154 Fed. Sup. 374, in United States *vs.* Anderson. That decision was rendered under the Jencks case prior to the Jencks law. The Papworth case came after the Jencks law and mentions what was said by Judge Moore in the pre-Jencks law Anderson case.

1170 Judge Moore sets out as follows the requirements under the Jencks case, which was far more loose than the Jencks law. His requirements are this: * * * (reading)

1172 That is what Judge Moore said when he was acting under the Jencks case.

In the Papworth case, they say that the same considerations are applicable now under the Jencks law.

The Court says: * * * (reading)

They were concerned with the problem of what they could get before the witness took the stand.

In the body of the Papworth case itself there were some FBI files and notes. The witness took the stand and testified.

During the course of the investigation an FBI agent named Taylor had made notes of what the witness would say. I would like to read that portion to your Honor, at page page 853: * * * (reading)

1180 By The Court: Now, tell me about the conversations Smith testified to which provoked this entire subject.

By Mr. Barnett: The conversation he testified to on the stand was that on February 2, 1956 he had a conversation with Paul DeLucia in Miami, Florida in which Paul DeLucia told him that—

By The Court: Each put in $25,000, into a common fund?

By Mr. Barnett: A common fund. That was the entire conversation.

By The Court: I will study this. I know the respective views now.

By Mr. Stewart: May I say just a little more here, your Honor?

The case that Mr. Barnett has been reading from is the opinion of a trial judge. It may be entitled to considerable respect, but after all, the history of the situation, as I understand it, is that the Jencks case was decided by the Supreme Court of the United States.

1181 By The Court: What were you reading from?

By Mr. Barnett: The Papworth case. It is the trial judge. There is no Circuit Court opinion on Section 3500 as yet, your Honor.

By Mr. Stewart: What I was about to say is that after the Supreme Court handed down the Jencks case, it is a controversial matter as you know, and the Congress endeavored to limit the matter.

Now the Supreme Court hasn't spoken since then because it is very possible they will say that Congress had no business unduly limiting what has been determined to be a court procedure in fairness to defendants who are on trial.

I would like to add this, your Honor, just for the record, and your Honor knows this: What Mr. Barnett is seeking to do—he is correct as far as using certain fundamental rules, and your Honor's remark indicates your Honor

1182 recognizes it, but what Mr. Barnett is trying to do, he is trying to put Mr. Smith on, and then have the Government just ask him about a very small part of the case, and then taking Mr. Smith off.

Well, that can't be done very well in fairness. Your Honor will remember that Mr. Smith was in charge and was sort of a regional—

By Mr. Barnett: He was a group supervisor.

By Mr. Stewart: Yes, at the time that Mr. DeLucia and I accompanied by Mr. Bernstein went into the Revenue office in response to a letter. The Government has put that meeting in as one of the overt acts in this case. I take it that as we go along that conversation will be in the record.

I think your Honor will be in a better position to rule on whether we get these things or not after your Honor studies that because it is linked up into the case, and

1183 I just submit to you now that under all the circumstances—

By The Court: Are you in a hurry on this, on the opinion?

By Mr. Barnett: I am in no hurry, your Honor. The question is—

By The Court: I will read this. I don't mind telling you, from what I have listened to, I will confine myself not only to anything in this file that has a direct bearing on the conversation before the jury, but anything that may have a probative value on that conversation or on that meeting anywhere along the line that would shed some light, I would consider favorably to disclosing it to counsel for the defense.

I will not—

By Mr. Stewart: I suppose we ought to wait.

By The Court: I will not permit anything else, anything that has no bearing on it or his own personal reactions to be given to counsel.

By Mr. Stewart: I think it would be better for us to wait for your ruling.

1184 By The Court: Yes. I am not making it now.

By Mr. Stewart: I suggest you are announcing now a standard which might be dangerous because, if I understand the Jencks case, it is not up to your Honor to decide as to what is valuable to us. We are entitled to these. It is not for your Honor to say what is germane to the case, and that is not the law.

By The Court: All I said was his own personal conclusions and deliberations.

1185 By Mr. Stewart: Well, your Honor, that comes into the case. After your Honor studies this—

By The Court: All right.

By Mr. Barnett: Your Honor, the point on this is that it may be true that what he says under the Jencks case may have taken it away from the discretion of the Court, but there is no question Section 3500 deliberately put it right back into it.

By The Court: We will hold it.

By Mr. Stewart: Suppose your Honor takes it and keeps it? It will take you a litttle time to read it.

By The Court: All right.

By Mr. Stewart: I suggest your Honor read them over.

By The Court: All right.

By Mr. Barnett: I think that would be a good idea, your Honor.

By The Court: All right.

Testimony of Paul Mahon.

1218 PAUL G. MAHON, testified:

Direct Examination by Mr. Barnett.

Q. Where do you live, Mr. Mahon? A. I live at Northport, Long Island, New York.

Q. And what is your occupation? A. I am a Special Agent attached to the Internal Revenue Service, the Intelligence Division.

Q. How long have you been employed by the Internal Revenue Service? A. I originally was employed in 1942 by the Collector's Office in Brooklyn, the Internal
1219 Revenue Service, and, following service in the Navy, when I came back in May of 1946, I was transferred to the Special Agent's Office in New York.

Q. Prior to your employment with the Internal Revenue Service, how were you employed? A. Upon graduating from high school, in 1934, I was employed with the Home Owners Loan Corporation as a messenger and worked my way up, and, in 1941, I was in the County Court, in the general legislature.

Q. Is that when you left the Agency? A. That is right. Sometime in the early part of 1943, I believe.

Q. Are you a graduate of any college? A. I am a graduate of the City College of New York.

Q. What degrees do you hold? A. I hold a Bachelor in Business Administration. I majored in accounting.

Q. As a Special Agent with the Internal Revenue Service, what type of audits and investigations have you made?

A. I have conducted very broad type of investigations and do individual returns, partnership returns and
1220 corporate returns.

Q. As a part of your official duties, were you assigned to the investigation of Mr. Paul DeLucia's income tax liability? A. I was.

Q. When was that assignment made? A. On or about November 27, 1956.

Q. Did you subsequently participate in an investigation of that matter? A. I did, sir.

1221 Q. In the course of your investigation of the matter, did you make a search of any public records?

A. I did.

Q. What public records did you search? A. Well, first off, I searched the County Probate Court for any possible estate or inheritances which Paul DeLucia or his wife, Nancy, might have been the beneficiaries of.

Q. And under what names did you search? A. I searched under the family name of DeLucia and under the family name of Giganti, particularly Anna and Ciro Giganti, parents of Nancy DeLucia.

Q. Where did you make this search? A. In the County Probate Court.

Q. For what periods did you search? A. From the period 1920 to 1950, inclusive.

Q. Did you find any records of any estates in those names? A. I did not.

Q. Did you make any additional search for assets held by Mr. Paul DeLucia? A. I did. I made a thorough search by going back into bank accounts, brokerage
1222 houses, insurance companies, county clerk's offices, wherever Mr. DeLucia might have owned property, and, general credit investigations to determine any possible investments or assets that Mr. DeLucia might have had.

Q. There is in evidence here, Mr. Mahon, income tax returns of Paul DeLucia beginning with the year 1935. Did you make a search to locate the 1934 return of Mr. Paul DeLucia? A. I did, sir.

Q. Where you able to locate such return? A. I did find a file record of a return. However, I was not able to get either the original return or a photostatic copy thereof.

Q. Did you find that according to the records of the Internal Revenue, where a tax had been paid upon that return? A. I did. From the Form 899 in evidence, I be-

lieve it is Exhibit 24—it indicates that a tax was paid by Mr. DeLucia for the taxable year 1934.

Q. And knowing the amount of the tax paid, are you able to compute the amount of net income that would
1223 have been reported on such return? A. Yes, I am.

Q. Have you made such computation? A. I did.

Q. And how did you make the computation? A. By working backwards from the taxes paid by Mr. DeLucia as shown on the Form 899, and by the use of a simple algebraic formula, you are able to work back and determine the net taxable income as indicated on that return.

Q. Have you prepared such computation in exhibit form? A. I have.

Q. And is Government's Exhibit No. 180 that computation? A. It is.

Q. Based on your computation of income from tax paid, Mr. Mahon, what was the amount of income that was—that is, net taxable income that is reflected on the 1934 return of Paul DeLucia? A. The net income of Mr. DeLucia for the year 1934 was $8,473.68.

Q. Have you found, from the evidence in this file, whether Mr. DeLucia—I mean, in this court room—
1224 whether Mr. DeLucia filed a return for the year 1920 to the year 1933, inclusive? A. From Form 899 in evidence in this court, it indicates that Mr. DeLucia did not file any income tax returns for the period 1920 to 1933 inclusive.

Q. And are you in a position to state the maximum income that Paul DeLucia could have received during that period of 1920 to 1933, without being required by law to file income tax returns? A. Yes, sir.

Q. Have you prepared a schedule by year, of the
1225 filing requirements, showing the maximum net taxable income that would be available to Mr. DeLucia without requiring him to file a return for that period, 1920 to 1933? A. I have.

1226 Q. Is that schedule based on the Internal Revenue Code with respect to filing requirements? A. It is.

Q. I hand you Government Exhibit No. 184 and ask you if that is a schedule prepared by you? A. Yes, it is.

Q. Can you state what the total amount of income that Mr. DeLucia could have received without being required to file a return in the period 1920 to 1933 is?

That is, I am asking you for the figure, now.

By Mr. Stewart: I object. That is speculative. That is a long time ago. It is too remote and there are so many possibilities. The jury could guess at that as well as the witness.

I think if he said it gives the jury his expert knowledge that there were certain laws, that is about as far as he could go.

Possibly that would be better to leave the Court to instruct the jury on.

1227 He is now about to inquire into the realm of speculation. All he knows is he found no record of any returns.

By The Court: All he is asking for is the maximum amount, combined maximum amount.

He may answer.

By The Witness:

A. The total amount would be $30,500.

By Mr. Barnett:

Q. Will you turn those exhibits over one by one as I give them to you, Mr. Mahon, and keep them in the same order as I am handing them to you?

Have you been present throughout the course of this trial, Mr. Mahon? A. I have.

Q. Have you listened to the testimony in the trial so far? A. I have.

Q. And have you examined the exhibits which have been offered in evidence so far? A. I have.

Q. Now, in connection with the year 1938, have you made a computation of the expenditures of Mr. Paul DeLucia in that year from the testimony offered by third parties in the court room? A. I have.

Q. And have you also examined the audit report of Revenue Agent Ned Klein reflecting expenditures made according to the books of Mr. Paul DeLucia? A. I have.

Q. And have you compared the expenditures shown thereon with the expenditures as testified to by third parties in the court room? A. I have.

Q. And have you prepared a schedule of such comparison? A. I have.

Q. Is Government Exhibit No. 161 the schedule to which you have just referred? A. It is.

Q. Now, with respect to the calednar year 1939, which was also covered in Mr. Ned Klein's report have you prepared a schedule comparing the testimony in the court room with the expenditures as listed on Mr. Klein's report as taken from Mr. DeLucia's books? A. I have.

Q. And is Government Exhibit 162 the schedule for the year 1939? A. It is.

Q. Have you examined the 1956 return of Mr. Paul DeLucia, which is here in evidence? A. I have.

Q. Have you listened to trial testimony concerning expenditures made in connection with the Long Beach residence of Mr. Paul DeLucia? A. I have.

Q. And have you analyzed the cost basis of the house as reflected upon the 1956 return? A. I have.

Q. And have you compared a schedule showing your analysis? A. I have.

Q. Is Government's Exhibit 163 the schedule to which you have referred? A. It is.

Q. Did you hear the testimony of the witness H. Gaylen Frey? A. I did.

Q. Did you prepare a schedule of the expenditures as testified to by Mr. Frey? A. I did.

Q. Is Government's Exhibit No. 164 such sched-
1231 ule? A. It is.

Q. Did you prepare a schedule of the expenditures testified to by Mr. Ray J. Beahan? A. I did.

Q. Is Government's Exhibit No. 165 such schedule? A. Yes, it is.

Q. And did you prepare a schedule of repairs to the Long Beach house with reference to the 1943 fire, as indicated in the report of former Revenue Agent Fred Armstrong as taken from work papers submitted to him by Mr. Eugene Bernstein? A. I did.

Q. Is Government's Exhibit 166 such schedule? A. It is.

Q. Have you prepared a schedule of the annual premiums paid to the Italo American National Union? A. I did.

Q. Is Government's Exhibit 167 such schedule? A. It is.

1232 Q. Let me hand you the balance of these schedules, Mr. Mahon. Will you keep them in order, please. Did you prepare a schedule with reference to insurance premiums paid? A. I did.

Q. Is that Exhibit 167? A. That is right, sir—no, that is Exhibit 168.

Q. It is 168? A. Yes, insurance premiums schedule, Exhibit No. 168, sir.

Q. Did you prepare a schedule of legal fees? A. I did.

Q. Is that Exhibit 169? A. That is right.

Q. Did you prepare a schedule of cost of living per admissions made to Mr. Ned Klein? A. I did.

Q. Is that Exhibit 170? A. That is right.

Q. Did you prepare a schedule of income tax payments as reflected on the District Director of Internal Revenue's records? A. I did.

1233 Q. Is that Exhibit 171? A. That is right.

Q. Did you prepare a schedule of retail occupational tax paid? A. Yes, I did.

Q. Is that Exhibit 171? A. That is right.

Q. Did you prepare an exhibit or did you prepare a schedule of miscellaneous taxes paid? A. I did.

Q. Is that Exhibit 173? A. That is right.

Q. Did you prepare a schedule relating to fine—extortion cases? A. I did.

Q. Is that Exhibit 174? A. That is right.

Q. Did you prepare a schedule of salary payments to James Amorino? A. I did.

Q. Is that Exhibit 175? A. That is right.

Q. Did you prepare a schedule of payments to Equitable Life Insurance Company? A. I did.

1234 Q. Is that Exhibit 176? A. That is right.

Q. Did you prepare a schedule of bail bond expenditures? A. I did.

Q. Is that Exhibit 177? A. That is right.

Q. Are all of these schedules that you have prepared, Mr. Mahon, based upon the evidence and the testimony in the trial thus far? A. That is right.

By Mr. Barnett: Your Honor, I will offer at this time Government's Exhibits 161 through 177 and Exhibits 180 and 184.

By Mr. Stewart: Will your Honor reserve ruling, please?

By The Court: I am just thinking. Of course, I am reserving my ruling as to you people.

By Mr. Stewart: Will you reserve ruling as to Mr. DeLucia until I cross examine?

By The Court: Yes, I will reserve ruling.

1235 By Mr. Barnett:

Q. Mr. Mahon, have you prepared a summary schedule of expenditures for the total period of January 1, 1934 to December 31, 1947 as testified to in this court room? A. I have.

Q. Upon what is this schedule based? A. This schedule is based upon the testimony given during the course of this trial in this court room.

1236 Q. These exhibits that you have just testified to, that is, Exhibits 161 through 177, and 180 through 184, are those sub-summary exhibits? A. They are, sir.

Q. I hand you Government Exhibit No. 182, Mr. Mahon, and ask you if that is the summary schedule of expenditures for the period 1934 through 1947? A. Exhibit 182 is a summary of the expenditures of Mr. Paul DeLucia for the period January 1, 1934 through December 31, 1947.

By Mr. Barnett: Your Honor, at this time I will offer Government Exhibit No. 182.

By The Court: The same ruling.

Do you want me to reserve ruling?

By Mr. Barnett: I believe I have it sufficiently identified for it to be received in evidence as a summary schedule, and I would like the witness now to explain it to the jury. I would like to show a large chart of this exhibit and provide copies of it for counsel and the Court and the jury, so that we can all follow the sequence of events on

1237 it and learn how Mr. Mahon has compiled it.

1238 I have quite a few questions to ask him about the format of the summary schedule and the source of his information, and that will substantially end it.

Your Honor, I have a copy of this document which we would like your Honor to have while we are going through the schedule.

Your Honor, I would like to pass copies of the schedule to the jury.

I take it there is no objection?

By The Court: You may.

GOVERNMENT EXHIBIT No. 182

PAUL DeLUCIA

SCHEDULE OF EXPENDITURES

JANUARY 1, 1934-DECEMBER 31, 1947

	1934	1935	1936	1937	1938	1939	1940	1941	1942
GOODBODY & CO.						$ 3,973.21	$ 16,202.78	$ 45.47	$
GREAT LAKES MORTGAGE CO.	$	$ 987.50	$ 929.02	$ 1,001.72	859.35	828.75	876.95	767.55	737.83
U. S. TREASURY BONDS (Coupon)				5,000.00					
NORTHWESTERN LIFE INS. CO.			848.20	1,177.40	771.60	789.60	808.20	806.80	805.30
AUTOMOBILES							1,550.00		
R. J. BEAHAN—REAL ESTATE & INS.	6,978.70	2,930.00		142.50	130.00	1,500.00	1,642.50	130.00	
HARVEY FRIER—REAL ESTATE							400.00		
ITALO-AMERICAN INS. CO.	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08
RIVER FOREST LOTS							2,000.00	2,450.00	
HANNAH SMITH—PERSONAL PROPERTY					1,500.00				
RIVER FOREST RESIDENCE					25,383.31				
RIVER FOREST TAX WARRANTS							340.55		
COOK COUNTY TAXES							843.36	875.86	1,196.71
LaPORTE COUNTY TAXES							815.47	336.71	328.76
INSURANCE—HOME & CAR								26.00	
MORRIS LEV, MD								135.00	1,065.00
U.S. SAVINGS BONDS, SERIES-E								2,250.00	4,575.00
ALFRED J. CILELLA, ATTORNEY									528.25
DANIEL LEVINTHAL, MD									2,500.00
FARM—REPAIRS & IMPROVEMENTS									9,161.84
FREY BROS.—BUILDING SUPPLIES		1,356.76	7,000.00	6,000.00					
SIBILANO—FURNITURE						18,702.84			
LEGAL FEES									
E. D. GLIDDEN									

GOVERNMENT EXHIBIT No. 182

PAUL DeLUCIA

SCHEDULE OF EXPENDITURES

JANUARY 1, 1934-DECEMBER 31, 1947

COST OF LIVING	3,500.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00
FEDERAL INCOME TAXES		220.00	633.60	2,181.00	6,600.66	11,806.33	16,793.68	22,866.11	33,363.03
TRANS-AMERICA STOCK				8,550.48					
ILLINOIS RETAIL TAX									350.00
U. S. GASOLINE & MISC. TAXES									91.77
MICHAEL REESE HOSPITAL								100.00	416.25
RIVER FOREST—REMODELING						30,145.90			
IMPROVEMENTS—INDIANA per DeLUCIA					17,814.69	12,377.07			
IMPROVEMENTS—ILLINOIS per DeLUCIA					5,063.54	13,011.17			
FARM PURCHASE									35,122.59
FARM—MORTGAGE PAYMENT					2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
EQUITABLE ANNUITY—PAUL DeLUCIA			20,000.00						
EQUITABLE ANNUITY—MARIE DeLUCIA			20,000.00						
EQUITABLE ANNUITY—ANTHONY DeLUCIA									
BAIL BOND PREMIUM									
EUGENE BERNSTEIN—LEGAL FEE									
A. GIACONI—RIVER FOREST									
A. CONTURSI—HOUSE FURNISHING								1,560.00	1,560.00
IMPROVEMENTS—INDIANA—per 1956 RETURN		1,585.27	16,260.00	1,300.00					
FINE—EXTORTION CASE									
WORLD AMUSEMENT CORP.	1,000.00								
LEGAL FEES—OTHERS									
U.S. PAROLE REPORTS—EXPENDITURES									
MATALONE MORTGAGE INTEREST									
ADDL. EXPENDITURES per ARMSTRONG							1,800.00	1,800.00	1,800.00
JAMES AMORINO—INDIANA		1,400.00	1,820.00	1,820.00	2,080.00	2,080.00	2,600.00	2,600.00	2,600.00
TOTAL EXPENDITURES	$ 11,749.78	$ 16,550.61	$ 75,561.90	$ 35,244.18	$ 70,274.23	$105,285.95	$ 56,744.57	$ 46,820.58	$106,273.41

GOVERNMENT EXHIBIT No. 182

PAUL DeLUCIA
SCHEDULE OF EXPENDITURES
JANUARY 1, 1934-DECEMBER 31, 1947

	1943	1944	1945	1946	1947	Exhibit No.
	$	$	$	$	$	
GOODBODY & CO.	3,548.68					25
GREAT LAKES MORTGAGE CO.	6,000.00					26
U. S. TREASURY BONDS (Coupon)	804.00	802.60				27
NORTHWESTERN LIFE INS. CO.					11,219.52	64-5-6
AUTOMOBILES						28
R. J. BEAHAN—REAL ESTATE & INS.						165
HARVEY FRIER—REAL ESTATE						29
ITALO-AMERICAN INS. CO.						167
RIVER FOREST LOTS						30
HANNAH SMITH—PERSONAL PROPERTY						31
RIVER FOREST Taffl WARRANTS						81
COOK COUNTY TAXES	1,553.76	1,148.42	1,243.42	1,342.56	1,511.68	32
LaPORTE COUNTY TAXES	314.82	246.98	310.80	402.60	429.08	33
INSURANCE—HOME & CAR	140.00	396.80	304.00	64.00	733.38	34
MORRIS LEV, MD	60.00	10.00	5.00	70.00	20.00	168
U.S. SAVINGS BONDS, SERIES-E	75.00					35
ALFRED J. CILELLA, ATTORNEY						36
DANIEL LEVINTHAL, MD						37
FARM—REPAIRS & IMPROVEMENTS						39
FREY BROS.—BUILDING SUPPLIES	52.80	261.87	367.29	197.31	334.00	38
SIBILANO—FURNITURE	1,881.79					122-164
LEGAL FEES	20,000.00					41
E. D. GLIDDEN	1,637.50					169
COST OF LIVING	7,800.00	7,800.00	7,800.00	7,800.00	5,200.00	42
FEDERAL INCOME TAXES	46,208.30	4,400.59	4,809.78	618.00	195.15	170
TRANS-AMERICA STOCK						171
ILLINOIS RETAIL TAX	150.00					43
U. S. GASOLINE & MISC. TAXES	100.00					172
						173

GOVERNMENT EXHIBIT No. 120

PAUL DeLUCIA

SCHEDULE OF EXPENDITURES

JANUARY 1, 1934-DECEMBER 31, 1947

MICHAEL REESE HOSPITAL						44	
RIVER FOREST—REMODELING						113	
IMPROVEMENTS—INDIANA per DeLUCIA						161-162	
IMPROVEMENTS—ILLINOIS per DeLUCIA						161-162	
FARM PURCHASE						95-97	
FARM—MORTGAGE PAYMENT	9,400.00					86	
EQUITABLE ANNUITY—PAUL DeLUCIA						176	
EQUITABLE ANNUITY—MARIE DeLUCIA						176	
EQUITABLE ANNUITY—ANTHONY DeLUCIA						176	
BAIL BOND PREMIUM	4,000.00					177	
EUGENE BERNSTEIN—LEGAL FEE			1,000.00			45	
A. GIACONI—RIVER FOREST	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	46	
A. CONTURSI—HOUSE FURNISHING				632.00		47	
IMPROVEMENTS—INDIANA—per 1956 RETURN						163	
FINE—EXTORTION CASE	10,000.00					174	
WORLD AMUSEMENT CORP.						49	
LEGAL FEES—OTHERS					1,820.00	138	
U.S. PAROLE REPORTS—EXPENDITURES					28,334.69	51	
MATALONE MORTGAGE INTEREST	1,800.00					50	
ADDL. EXPENDITURES per ARMSTRONG	5,212.09					166	
JAMES AMORINO—INDIANA	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	175	
TOTAL EXPENDITURES	$124,898.74	$ 19,227.26	$ 20,000.29	$ 15,286.47	$ 58,957.50		

RECAPITULATION

1934	$ 11,749.78
1935	16,550.61
1936	75,561.90
1937	35,244.18
1938	70,274.23
1939	105,285.95
1940	56,744.57
1941	46,820.58
1942	106,273.41
1943	124,898.74
1944	19,227.26
1945	20,000.29
1946	15,286.47
1947	53,957.50
Total	$757,875.47

By Mr. Barnett: Your Honor, the light in the court room is not particularly good and this chart is not exceptionally large. That is why we have given you smaller 1239 copies so that everybody can follow it.

By The Court: I presume that that is a duplicate of what we have in our possession?

By Mr. Barnett: That is right, your Honor. This is merely a large copy of what each of us has in our hand.

PAUL DeLUCIA — COMPUTATION OF POSSIBLE CASH ON HAND

Year	Cash Income per Return	Adjustments Per RAR	Unreported Extortion Income	Additions to Income	Gross Funds Available	Proven Expenditures	Possible Cash on Hand December 31st
1934	$ 8,473.68	$ —	$ —	$ —	$ 8,473.68	$ 11,749.78	$ —
1935	13,260.00	—	44,757.06	—	58,017.06	16,550.61	41,466.45
1936	24,000.00	—	83,899.61	—	107,899.61	75,561.90	73,804.16
1937	42,916.63	—	85,046.71	—	127,963,34	35,244.18	166,523.32
1938	59,747.00	2,799.72	14,078.08	203.00	76,827.80	70,274.23	173,076.89
1939	74,058.17	5,209.97	—	33,832.24	113,100.38	105,285.95	180,891.32
1940	60,764.78	—	—	11,810.63	72,575.41	56,744.57	196,722.16
1941	72,186.80	—	—	9,147.78	81,334.58	46,820.58	231,236.16
1942	72,503.52	—	—	2,695.00	75,198.52	106,273.41	200,161.27
1943	80,375.00	—	—	—	80,375.00	124,898.74	155,637.53
1944	—	—	—	—	—	19,227.26	136,410.27
1945	1,000.00	—	—	—	1,000.00	20,000.29	117,409.98
1946	143.50	—	—	—	143.50	15,286.47	102,267.01
1947	387.50	—	—	—	387.50	53,957.50	48,697.01
Totals	$509,816.58	$ 8,009.69	$227,781.46	$ 57,688.65	$803,296.38	$757,875.47	$ 48,697.01

ANALYSIS OF ADDITIONS TO INCOME

	Total	1938	1939	1940	1941	1942
World Amusement Co.	$ 3,603.00	$ 203.00	$ 400.00	$ —	$ 3,000.00	$ —
Trans-America Stock	3,432.24	—	3,432.24	—	—	—
Steve Matalone Mtg.	30,000.00	—	30,000.00	—	—	—
Goodbody & Co.	17,958.41	—	—	11,810.63	6,147.78	—
Farm Receipts	2,695.00	—	—	—	—	2,695.00
Totals	$ 57,688.65	$ 203.00	$ 33,832.24	$ 11,810.63	$ 9,147.78	$ 2,695.00

Note: Exhibit 181 being the chart is as follows:

By Mr. Barnett:

Q. Mr. Mahon, in the upper left-hand corner—pardon me—the very top of the chart reads:

"Schedule of Expenditures, January 1, 1934-December 31, 1947."

Now in the left-hand column, what have you listed? A. In the left-hand column I have the names of the individual items of expenditures. That is, as to where the expenditure relates or occurred. For instance—

Q. Now taking the first item on the chart, Goodbody & Company, going over under the years 1934, 1935, 1936, 1937 and 1938, you have no entries.

What is the indication of that? A. Mr. DeLucia
1240 did not open his account with Goodbody & Company or did not buy any stock, which ultimately went through Goodbody & Company, until 1939.

1241 Q. Then you have entries under the 1939 year and the 1940 year. What is the explanation of those entries? What do they record? A. These entries represent expenditures made by Mr. DeLucia for the purchase of stock, capital stock, with the firm Goodbody & Company.

Q. Now the year 1941 is a minor amount, and the balance of the years over to 1947 have no figures.

Does that mean there were no expenditures for stock with Goodbody & Company during those years? A. That is right, sir. The account was closed out sometime in the early part of 1941.

Q. Then, I— A. (Continuing) Mr. Barnett, I would like to explain one thing on that item, sir, to avoid any confusion.

The account with Goodbody was actually opened in 1940, and Mr. DeLucia had delivered in, I believe, January, 1940, some shares of stock which he had purchased in 1939 as represented by the figure $3,973.21 on the expenditure

schedule.

Q. Now, then, in the extreme righthand column 1242 you have Exhibit Number, and with reference to Goodbody & Company you have Exhibit No. 25. Do those numbers refer to the exhibits in evidence which form the basis for your computation? A. That is right, sir.

Q. Then the next item, Mr. Mahon, is the Great Lakes Mortgage Company. You have opposite that in the year 1935, $987.50. Then you have various figures for subsequent years.

Does that indicate expenditures that were made to the Great Lakes Mortgage Company? A. That is right, sir.

Q. And in connection with the Long Beach house? A. That is right. Those payments represent payments of principal, interest and insurance on Mr. DeLucia's residence out in Long Beach, Indiana.

Q. Now, dropping down, Mr. Mahon, there are a number of other items that are listed on here. Is your explanation substantially the same with respect to each of them as to how they are recorded on this chart? A. That is right, sir.

Q. Now, coming down to the caption: "Improvements—Indiana per DeLucia", which would be a little better 1243 than half way down on the chart— A. Yes, I have it, sir. Referring to Exhibits 161 and 162.

Q. Those are the exhibit numbers over on the righthand side, is that right, Exhibit 161 and 162? A. That is right, yes.

Q. What are those exhibits 161 and 162? A. Exhibit 161 is an analysis of the expenditures of Paul DeLucia for the year 1938.

Q. That is a summary analysis made by you, is it not? A. That is right, sir.

Q. Is that summary in turn based upon exhibits in evidence? A. It is.

Q. What was your purpose in preparing that summary? A. The purpose in preparing that summary was that during the course of the trial we had testimony by Revenue Agent Ned Klein concerning an examination conducted by him back in December of 1940, at which time he examined Mr. DeLucia's 1938 and 1939 year returns, and from Mr. DeLucia secured from him his books
1244 and records which showed a total expenditure by Mr. DeLucia in the year 1938 of $70,274.23.

Trial testimony in this court—

Q. From third party witnesses? A. From third party witnesses, totaled $47,396 even. Therefore there was an additional expenditure admitted to by Mr. DeLucia of $22,878.23.

That is analyzed on this schedule in accordance with the method in which Mr. DeLucia kept his records and as indicated in the report of Revenue Agent Ned Klein.
1245 Q. Now with reference to the next item on the schedule, "Improvements—Illinois, per DeLucia," you also have a designation under the exhibit column of 161 and 162. What does that refer to? A. That is merely a proration of the expenditures made by Mr. DeLucia. As I said, he admitted to additional expenditures of $22,878.23, and my schedule here, Exhibit 161, covering the year 1938 analyzes that between his expenditures made to River Forest and Long Beach. The River Forest amount would be $5,063.54, and the amount attributed to Long Beach, Indiana would have been $17,814.69.

Q. Now a little further down on the schedule, in fact the bottom item, you have figures under each year and you have Exhibit No. 175. A. Yes, sir.

Q. Will you explain how you arrived at those figures?

A. Those figures represent the testimony given by James Amorino in this court during the course of
1246 this trial as to his wages received from Paul DeLucia and Nancy DeLucia during his term of employment from 1935 to 1947 at Mr. DeLucia's Long Beach home.

Q. You have set forth the computation in the sub-summary exhibit, No. 175? A. That is right, sir.

Q. That is, you computed it on the basis of a weekly salary multiplied? A. That is computed on the basis of the number of weeks which Mr. Amarino testified that he worked during each year.

For the year 1935, Mr. Amorino testified that he had been paid a salary of $35 a week and that he had started, had worked 40 weeks during that year, for a total of $1,400.

For the balance of the period he was paid at various rates of $35, $40 and $50 a week, and he worked the complete year. That is how you account for the $1,820 on your schedule, which indicates 52 weeks at $35 a week.

$40 a week for 52 weeks is your $2,080; and your $50 a week for 52 weeks is $2,600 a year, as shown on
1247 Exhibit 182.

Q. Now, Mr. Mahon, will you refer to an item captioned "Legal Fees," which is about mid-way on the schedule, and opposite that in the year 1943 is the dollar amount $20,000, and under the exhibit column is the Exhibit No. 169.

Will you explain that item to us, please, how you reached the figure of $20,000? A. During the course of the trial here, former Special Agent Tom Smith of the Chicago Office testified that in conversation with Mr. DeLucia, Mr. DeLucia had told him that he had expended some $25,000 in legal fees in connection with the extortion trial and litigation pursuant thereto.

In our application of this expenditure, $20,000 was applied to the year 1943 as having to do with the extortion trial and $5,000 was applied to the year 1947 as having to be another legal fee paid by Mr. DeLucia in November, 1947.

1248 Q. Mr. Mahon, there is an item on the schedule entitled "Improvements—Indiana—per 1956 return." It is about seventh or eighth up from the bottom. Then there are certain figures under the various years. Then there is an Exhibit No. 174 which I believe you testified is one of your sub-summary exhibits. A. That is right, sir. I think the exhibit number might be 163, Mr. Barnett, the one above 174.

Q. Oh, yes. Will you explain that item to us?

A. On Mr. DeLucia's 1956 return, he reported the sale of his Indiana home, and pursuant thereto he had a schedule attached to the return which indicated his cost of this property. He furnished it broken down in two periods, from the date of acquisition in 1935 until 1947, and then subsequent to 1947.

I have prepared a summary schedule here indicating the amount of expenditures given per third party witnesses during the course of this trial in comparison with the admissions of Mr. DeLucia on his 1956 return, and as a result determined that Mr. DeLucia had expended or

1249 had a cost basis as of December 31, 1947 of $91,422.07, while the testimony given in the course of this trial by third party witnesses totaled $74,639.30, leaving an additional expenditure admitted by Mr. DeLucia of $20,782.77.

Q. That is the total, is that right? A. That is right, sir.

Q. However, you have that broken down into years on the master schedule Exhibit? A. Yes.

Q. What is the exhibit number of that master schedule?

A. Exhibit 182.

Q. About midway on the chart, Mr. Mahon, is the caption "Cost of Living." Then there are various figures running across the page, mostly at the rate of $7800.00 per year.

In the year 1934 the cost of living is figured at $3500.00, and in the year 1947 it is figured at $5,200.00, and in all other years at $7800.00. You have an Exhibit No. 170. Will you explain that item to us, please? A. During the course of Mr. DeLucia's examination for the years
1250 1938 and 1939, at which time he produced his books and records to Revenue Agent Ned Klein, his records reflected the payment of $150.00 a week to his wife for household expenses.

Mr. DeLucia further explained that this was the money he gave his wife to operate the house on. That figure was then used as a cost of living expenditure during the period 1935 to 1946 inclusive.

For the year 1934, since Mr. DeLucia's income had been arrived at to be in the neighborhood of $8,473.68, the cost of living figure was scaled down to a figure of $3500.00.

For the year 1947, since Mr. DeLucia did not return home until August 13, 1947, the cost of living was therefore split between that period of January 1, 1947, and, I would say, September 1, 1947, and the balance of the cost of living for that year would be reflected in Exhibit No. 51, which on Mr. DeLucia's parole statements, monthly reports, as shown in a total amount on my schedule 182, Exhibit No. 182, in the amount of $28,334.69.

1251 Q. Right beneath the "Cost of Living," Mr. Mahon, is the phrase, "Federal income taxes."

Then you have various figures for the various years on that, and you wind up with Exhibits No. 171.

Will you explain that to us, please? A. Exhibit 171 is a schedule of the income tax payments made by Paul DeLucia as reflected on Form 899, Government Exhibit 24, which has been received in evidence in this trial.

Q. What is Form 899? A. Form 899 is a schedule of payments and credits made to an individual taxpayer's account.

Q. Is that taken off the records of the District Director? A. It is, sir.

From the Form 899, and tracing back through Mr. DeLucia's bank account, I verified the following payments made for the years 1935 through 1947 in a total amount of $150,696.23, which is indicated by the various figures on the schedule of expenditures, Exhibit 182, beginning with $220 in 1935, and ending with $195.15 for the year 1947.

1252 Q. Now, Mr. Mahon, at the bottom of the column for each year, there is a figure.

I assume that that is the total figure of expenditures in each calendar year? A. That is right, sir.

Q. They are not cumulated across the page, are they?

A. No, sir, they are not cumulated across the page. There is a recapituation at the lower portion of the schedule.

Q. And that recapitulation is the addition of the total expenditures, is that correct? A. That is right, sir.

Q. For the period 1934 through 1947? A. That is right.

Q. That figure is how much? A. $757,875.47.

1260 Q. Mr. Mahon, on this summary schedule do you have a notation with reference to the purchase of the River Forest home? A. I have, sir.

Q. And that is approximately eight or ten down 1261 the line, isn't it? Is it "River Forest Residence",

Is that the caption? A. That is right, sir, in the year 1938.

Q. Will you explain to us how you reached that computation? A. In November, 1938, Paul and Nancy DeLucia purchased the property at 812 Lathrop Avenue from one Hannah M. Smith.

That testimony was given on the stand here by Mr. Stanley Yaeger of the Oak Park National Bank.

In those days, it was known as the Prairie State Bank.

It indicated that the total purchase price was $25,383.31.

1262 Q. Do you have a reference to purchase of the Kendall County farm? A. I do, sir.

Q. Approximately where is that on the list? A. And, that would be in the year nineteen forty—

Q. Where is it on the list? How far down? A. It is under the caption "Farm Purchase" about two-thirds of the way down and it would occur in the year 1942.

Q. I see. A. And, in the year 1942, you will find an expenditure in the amount of $36,122.59, indicating the purchase price. That would represent merely the portion paid over in cash by Mr. DeLucia at the time of closing, in the year 1942 when he purchased this farm from the Prudential Life Insurance Company.

I believe Mr. Gaynor of Prudential testified, during the course of this trial, to the sale of this farm to Paul DeLucia.

Q. Now, I note just beneath that, Mr. Mahon, you have a series of headings, "Equitable annuity—Paul DeLucia" and so forth for Marie and Anthony DeLucia.

1263 Will you explain those? A. Yes.

Q. Explain those expenditures to us. A. Yes. In the year of 1936, you will find two $20,000.00 items representing the purchase by Paul DeLucia of retirement

annuities, one in the name of Marie DeLucia, his daughter, and the other in the name of Anthony DeLucia, his son, each for $20,000.00 and purchased from the Equitable Life Insurance Society of New York.

Just above that, in the years 1938, and carried on through the year of 1942, is an expenditure of $2,000.00 even in each year, which represents a purchase of a retirement annuity by Paul DeLucia in his own name, an annual premium to be paid of $2,000.00 a year, as shown on the expexnditure sheet.

1264 Q. Do you have an expenditure listed for the remodeling of the River Forest home? A. I do, sir.

Q. What is that heading? A. That is carried under the caption, "River Forest-Remodeling," and occurs in the year 1939.

Q. How far down the chart is it, approximately? A. A little better than half the way down the chart, in the year 1939.

Q. I see it, under "Michael Reese Hospital." Will you explain that item to us, please? A. In the year of 1939, Mr. DeLucia remodeled—by that, I should say he added an addition to his River Forest home, at a total cost of $30,145.90. That item was testified to by Mr. James of Avery Brundage & Company, and I believe was also mentioned by Mr. Hugh Garden of Schmidt, Garden & Erickson during the course of their testimony at this trial.

Q. There is an item down near the bottom entitled "Fine-Extortion Case," about sixth up from the bottom, and it indicates that under the year 1943 that $10,000

1265 was expended. Will you explain that item to us, please? A. Yes, sir.

That $10,000 item shown in the year of 1943 represents a fine assessed against Paul DeLucia following his conviction for extortion in the movie trial, which took place in

December, 1943, in the Southern District of New York, U.S. Court House.

That fine was subsequently paid out of the proceeds of a fine bond posted by Mr. DeLucia following his conviction and sentencing, which occurred on December 31, 1943.

Q. Now, Mr. Mahon, did you hear the testimony in this court room of the attorney Anthony Bradley Eben? A. I did, sir.

Q. Did you hear the testimony in this court room and examine the records of an attorney named Mr. Mack. A. I did, sir.

Q. Have you treated those legal fees that were testified to by those two persons on this chart? A. Only
1266 to the extent of the admission made by Mr. DeLucia to former Special Agent Tom Smith, wherein he had stated he had paid $25,000 towards his expenses of the extortion trial, and they have been prorated $20,000 to 1943 and $5,000 carried over into 1947.

Q. That item you are referring to now was in the year 1943, about half way down the chart? A. That is right, sir.

Q. Legal fees? A. In the year of 1943, the $20,000 note, represents the portion applied to the year 1943, and the $5,000 I referred to would be carried over to the year of 1947, and is shown as part of the $28,334.69 item which is in evidence as Exhibit 51.

1267 Q. For the purposes of this summary then, Mr. Mahon, did you treat the fees paid to Mr. Eben and to Mr. Mack as being paid out of the common defense fund to which Mr. DeLucia had contributed $25,000.00? A. I did.

Q. Now, Mr. Mahon, in addition to the preparation of this expenditures summary to which you have just testified,

have you also prepared a schedule of possible cash available to Mr. DeLucia during each of these years A. I have.

Q. And upon what was that schedule based? A. That schedule was based upon evidence in record in this trial and upon all items of income which I could determine properly reflected Mr. DeLucia's cash position during the years 1934 through 1947, inclusive.

Q. Now, specifically, did you consider in making that determination the income tax returns that are here in evidence? A. I did, sir.

Q. Did you also consider the testimony of Revenue Agent Ruggaber, Revenue Agent Klein, Revenue Agent Armstrong, and their various reports which were
1268 submitted in evidence? A. I did, sir.

Q. Did you make allowances in your analysis of available funds for non-taxable income or for income received from loans, gifts or inheritances? A. I did.

Q. With specific reference to the individual items that you considered, what were they? A. The individual items I considered in arriving at, or in setting up my schedule of possible cash on hand for Paul DeLucia, I took into account first off the total cash income reflected on Mr. DeLucia's returns for each year from 1934 through 1947.

I then gave Mr. DeLucia credit for any adjustments made by Revenue Agent Ned Klein in his examination of the 1938 and 1939 returns of Mr. DeLucia.

I also took into account the adjustment set up by Revenue Agent William Ruggaber in connection with his reexamination of Paul DeLucia's returns for the period 1935 through 1941, and gave him credit for additional extor-
tion money which Mr. Ruggaber had determined had
1269 not been reported by Mr. DeLucia.

I also took into account the examination made by Revenue Agent Fred Armstrong in 1947 in connection with the 1942 and 1943 returns of Paul DeLucia.

I then further gave Mr. DeLucia credit for all loans, such as the Matalone mortgage in 1939.

Q. In what amount? A. In the amount of $30,000.00. I gave him credit for funds received from the World Amusement Corporation during the years 1934 through possibly 1941.

I gave him credit for a return of capital on his brokerage transactions with Goodbody & Company, and I gave him credit for these funds received on the sale of Transamerica stock, which I believe he sold in 1940, some date like that, sir.

1271 Q. Mr. Mahon, is Government Exhibit No. 181 the summary of cash available that you have prepared as you have just testified, before the recess? A. It is.

By Mr. Barnett: Your Honor, I have a blow-up of that summary which I would like to get out and I have copies for everybody.

By Mr. Barnett:

Q. Mr. Mahon, in the left-hand column you have the years listed vertically, is that correct? A. That is right.

Q. And in the next column you have "Cash In-
1272 come per Return."

The income that is shown there, is that the income that was taken off the returns? A. That is the cash income that is reflected by each respective return for the period 1934 through 1947.

Q. Now, in the year 1934 you have the figure of $8,473.68. There was no return available for that year? A. That is right.

Q. And you got that figure on your computation from the tax paid for that year, did you? A. That is right.

Q. Now, the next column you have "Adjustments per R.A.R."

Will you explain what the letters, "R.A.R." mean? A. "Adjustments per R.A.R." refers to adjustments there in the year 1938 and in the year 1939. Those two adjustments refer to the adjustments made by Revenue Agent Ned Klein who appeared in court here and who testified in this trial.

1273 Q. Is the effect of those adjustments to increase the amount of cash available to Mr. DeLucia? A. They do.

Q. Then, in the next column you have headed "Reported Extortion Income."

Would you explain where you get those figures? A. The $227,781.46 represents the additional extortion income allocated to Mr. Paul DeLucia by Revenue Agent William Ruggaber. Mr. Ruggaber tesified during the course of this trial to this amount of money.

Taken from Mr. Ruggaber's reports are unreported extortion income for the year 1935 in the amount of $44,757.06; for the year 1936, $83,899.61; for the year 1937 in the amount of $85,046.71, and, in the year 1938, $14,078.08.

1274 Q. Now the next column you have headed "Additions to Income."

What do you mean by that? A. The additions to income as shown in Exhibit 181 represents additional funds available to Paul DeLucia during the years 1938 to 1942.

Q. From what sources? A. All of the additions to income are items that have been testified to in the course of this trial or have been stipulated during the course of this trial by Mr. Stewart.

Q. What are they composed of? A. The first item of $203 represents additional funds received by Paul DeLucia during the year of 1938 from the World Amusement Company, of which he was a stockholder.

He also received an additional $400 in 1939 from World Amusement Corporation, and in 1941 on the sale of his stock interest in the World Amusement Corporation, he received $3,000 from one Abraham Teitel.

The item of $3,432 represents—

Q. Just a minute. I see I have been looking at 1275 different figures.

Will you come back to the column headed, "Additions to Income" up at the top? A. All right.

The additions—

Q. Now in that column opposite the year 1938, you have the figure $203? A. That is right, sir.

Q. Beneath that you have the figure $33,832.24?

A. That is right, sir.

Q. Now will you explain what the $33,832.24 is from?

A. Yes. You will notice on the lower portion of your schedule of "Possible Cash on Hand to Paul DeLucia," an analysis of the column "Additions to Income." That is on the lower part of the chart, and is typed on the lower portion of the sheet that we all have.

Q. That is spread across year by year? A. That is right, sir.

Q. Now the year 1938 has only $203 in it, and that is from World Amusement Company, is that correct?

1276 A. That is right, sir.

Q. In the upper part, opposite the year 1939, you have the figure $33,832.24? A. That is right, sir.

Q. You explain that, do you, under the year heading 1939 beneath the caption "Analysis of Additions to Income" in the lower part of the chart, is that correct?

A. That is right, sir.

1277 Q. Now, will you explain that to us? A. For the year 1939 there was a total additional income given to Paul DeLucia in the amount of $33,832.24. That figure is composed of $400.00 he received from World

Amusement Corporation, $3,432.24 which he received on the sale of stock that he owned of TransAmerica Corporation, and $30,000.00 which he received as a mortgage loan from one Steve Matalone.

That three figures total the $33,832.24 indicated above.

Q. Then in the year 1940, you have $11,810.63, which is one item. A. That is right, sir, and that represents a return of capital to Paul DeLucia from his brokerage account of Goodbody & Company.

That figure actually represents the trading that Paul DeLucia did through Goodbody & Company, which is a brokerage house. In other words, he would buy stock and in turn sell some shares or trade in stock so that while we charge him for the expenditures, we also give him credit for his receipts from the same source in the same year.

1278. Q. In the year 1941, you have a total figure of $9,147.78 up above, and that is broken down under the year heading 1941 in the lower section of the chart, is that correct? A. That is right, sir. That figure $3,000.00 was received by Paul DeLucia on the sale of his capital stock in World Amusement Corporation from one Abraham Teitel, and $6,147.78 being a return of capital from Goodbody & Company, as I have just finished explaining, totaling $9,147.78.

Q. And the figure opposite the year 1942 of $2,695.00 is explained down below as being from farm receipts, is that correct? A. That is right, sir. That represents—

Q. Where do you get that information? A. That represents Mr. DeLucia's farm receipts as indicated, I believe, on his 1942 return.

Q. Now, in the next general column up above, you have the caption "Gross Funds Available." What does that column represent? A. Gross Funds Available represents the aggregate cash on hand that Mr. DeLucia had before applying any expenditures. That figure—

Q. Just a moment, Mr. Mahon. Does that mean
1279 that this column is the addition of the four columns that preceded it? A. That is right.

1280 Q. So that all the funds that are explained in Column 1, Column 2, Column 3 and Column 4 are totaled under the heading "Gross Funds Available," is that right? A. That is right, sir.

Q. And the "Gross Funds Available," the total gross funds available for the entire period 1934 to 1947 are $803,296.38, is that correct? A. That is correct, sir.

Q. In the next column you have the caption, "Proven Expenditures."

What is the explanation of that? A. "Proven Expenditures" refer to the expenditures which appear on Exhibit 182, which was on our other chart this morning. That represents the yearly expenditures as proven by trial testimony in this court and applied against the gross funds available which we credit Mr. DeLucia with in order to arrive at a possible cash on hand position as of December 31st in each respective year.

Q. The last column is entitled, "Possible Cash on Hand December 31st." At the top of the column opposite
1281 the year 1934 is a blank figure. I take it that is a zero or should be a zero? A. That is right, sir.

Q. How did you arrive at zero cash on December 31, 1934? A. Well, since Mr. DeLucia had not filed a return prior to the year of 1934, his maximum cash income which we developed through a prior schedule here, and I gave a figure of $30,500, would represent his maximum income without being required to file an income tax return during the period 1920 when he first arrived in this country through 1933, and it is assumed that whatever funds he earned during that period of time he had expended in his cost of living.

Further, as you will notice on our spread sheet, his cash funds available for the year 1934 total only $8,473.68.

Q. That would be under "Gross Funds Available"?

A. Under "Gross Funds Available," that is right, sir, and our "Proven Expenditures" in the next column total for the same year 1934, $11,749.78, meaning that from our investigation it was determined that Mr. DeLucia
1282 spent in the neighborhood of some $3,276.10, I believe, in excess of his funds available per his 1934 return.

Rather than to apply a negative cash on hand position at that time, we merely wrote off that as an possible savings or accrual of income he might have had at that date, and proceeded from the year 1935 in developing our cash on hand position.

Q. The possible cash on hand figures in the last column, then, are arrived at by deducting the proven expenditures from the gross funds available, is that correct? A. That is right, sir.

1283 Q. What possible cash on hand did Mr. DeLucia have as of December 31, 1943? A. As of December 31, 1943, Mr. DeLucia's possible cash on hand was $155,637.53.

Q. What possible cash on hand did Mr. DeLucia have as of December 31, 1947? A. $48,697.01.

Q. Now, when you use the term "possible cash on hand" what do you mean? A. That means that is the greatest amount of cash on hand that Mr. DeLucia could have had from the income which we were able to develop, credit him with, and the proven expenditures which we charged him with.

Q. Does that mean that you necessarily located all of the expenditures that he had? A. We used every expenditure that we could establish and prove and we gave Mr. DeLucia credit for every dollar of cash or income that we could find.

Q. Now, with reference to the year 1938, the end of the year 1938, how much cash on hand do you show on that schedule? A. As of December 31, 1938, I
1284 credited Mr. DeLucia with having possible cash on hand in the amount of $173,076.89.

Q. And how much cash on hand did you credit Mr. DeLucia with having at the end of the year 1939?

A. $180,891.32.

Q. Did you examine the report of Revenue Agent Ned Klein? A. I did, sir.

Q. How much cash on hand did Mr. DeLucia have at the end of the year 1939, according to his record, as reflected in Ned Klein's report? A. May I have the exhibit, Mr. Barnett?

Q. I hand you Government's Exhibit No. 62.

A. Thank you. I am reading now from Government's Exhibit No. 62, which is the revenue agent's report of Ned Klein dated December 31, 1940.

From Mr. Klein's report, Mr. DeLucia stated to him that as of December 31, 1938, he had cash on hand of $10,811.20. This was composed of $1600.00 cash in pocket, no cash in vault, and $9,211.20 as cash in bank, making a total of $10,811.20.

On my spread sheet, as of December 31, 1938, I
1285 credited Mr. DeLucia with possible cash on hand of $173,076.89. For the year 1939, again reading from Government's Exhibit 62, which is the report of Revenue Agent Ned Klein, Mr. DeLucia stated to Mr. Klein that he had a total cash on hand as of December 31, 1939, of $22,162.14, which was composed of cash in vault, $15,900.00; cash in pocket $700.00, cash in bank $1,588.93.

And then, he has a further figure of U. S. Steel stock, purchased, of $3,973.21.

Actually, that would probably be a cash on hand figure. However, that totals $22,162.14.

I had, at the year end, December 31, 1939, on my work sheet, Government's Exhibit 181,—I credited Mr. DeLucia with having cash on hand of $180,891.32.

1286 Q. Have you, Mr. Mahon, given Mr. DeLucia credit for cash or income from all sources that you were able to determine? A. Yes, I did, sir.

Cross Examination

By Mr. Stewart:

Q. Now, Mr. Mahon, you have qualified here as an expert, have you not? A. Yes, sir.

Q. And I take it you have been on the stand before, in courts before, on the witness stand? A. Yes, I have, sir.

Q. About how many times? A. Oh, I would say approximately a half a dozen times, sir.

Q. And as an expert in this field, you are familiar in a general way with what is meant by the net worth calculation of income? A. I am, sir.

1287 Q. I don't believe that has been explained. Well, would you mind, and please explain it to the Court and the jury, in general, what that theory of prosecution is? A. The net worth theory, sir?

Q. Yes. A. Well, many times, in the course of an examination, you find out that a taxpayer has records that are inadequate, has records that are incomplete or possibly has a lack of records or, in the fourth category, maybe would have records which do not reflect all of his transactions or do not explain all of his transactions, and, therefore, the Government must resort to another method, commonly referred to as the net worth method, and, sometimes referred to as an expenditure method, in order to develop and determine an individual taxpayer's true taxable income.

Q. Well, when you get down to calculating one year, like for instance 1948, in the first indictment here, you try to find out from the evidence or prove to the Court and jury what the total worth of the taxpayer was
1288 at the beginning of the year and then what it happened to be at the close of the year, wouldn't you?

A. Would you repeat that question? I didn't quite follow that question.

Q. Well, it is important, if you are going to consider one year, say 1948—you have to know how much cash the man had on hand at the end of 1947, isn't that right?

A. You mean if I am using a net worth system?

Q. That is right. A. I would not only have to know what cash he had on hand if I was going to use the net worth system, but, I would have to know his total assets or total liability, in order to show or in order to develop if there was an increase or not, yes.

Q. Each case has to be considered according to the facts that are developed in that particular case, isn't that right? A. That is right, sir.

Q. And sometimes, as a Revenue agent, you have experienced cases where a man has made a financial
1289 statement either to Revenue agents or some bank or somebody, to start with; you have had such cases?

A. Occasionally there have been, yes.

Q. Now, the opening net worth is a phrase that has a special meaning to you, as an expert, doesn't it, "Opening Net Worth"? A. Yes, sir.

Q. That is an important feature, isn't it, in this type of calculation? A. Yes, sir.

Q. And, at Mr. Barnett's request, you have gone on back and tried to determine the opening cash on hand had by Mr. DeLucia way back in 1934, haven't you? A. That is right, sir, but I would add something else to that,

Mr. Stewart:

In fairness to an individual taxpayer, I prefer to do that, sir, myself.

1290 Q. Well, now, as you are giving testimony here, as I understood Mr. Barnett's questions and as I believe you probably understood them, you were basing your answers on the evidence that has been introduced in this case, isn't that right? A. That is right, sir.

Q. And you, as an expert, and having some experience in going to court, you know you have no right to go outside of the evidence, haven't you? A. No, sir. I stay with the evidence.

Q. And, in so far as the conclusions you have drawn are based on the evidence, they have value, but, if you don't base them on the evidence, of course it would be for the jury to determine what value your opinion might have, isn't that right? A. I would make no observations except from the evidence, sir.

Q. And would you undertake to pass upon the credibility of witnesses as you do this? A. I don't quite follow your question, Mr. Stewart.

Q. Well, as you tell us what you understand the evidence is, do you reject some of it and add to some

1291 of it, depending on whether you believe a witness or do not believe a witness? A. No, sir.

Q. That is not your function, is it? A. No, sir. Merely get all the data together that I can. I make a thorough investigation and I determine all the expenditures and all the income. I don't speculate on either expenditures or income, sir.

Q. And all the time you have been making the answers, we can qualify each answer that you have made, that they are based upon evidence which the Court and the jury heard in this case, as well as your hearing it, is that right?

A. That is right, sir.

Q. Now, you have given some reasons for some of your opinions and I am going to explore them with you a little bit. A. Fine.

Q. You started Mr. DeLucia out with nothing in the way of cash, didn't you? A. That is right, sir.

Q. Back in 1934. A. That is right.

1292 Q. Now, if the jury doesn't agree with you, of course, that will affect your opinion as you go along, won't it? A. I don't follow your question.

Q. But, you gave us your reasons for coming to the conclusion that Mr. DeLucia had nothing at the beginning of 1934; you gave us some of those reasons, didn't you?

A. That is right.

Q. And, as I understood, you couldn't find the return for—what year was that you couldn't find it for? A. For 1934.

Q. Yes, but you found, from the records that still remain in the Bureau, a figure showing the amount of tax paid? A. That is right, sir.

Q. And then you worked that backwards, using a formula and figured out about what the income was

1293 for 1934?

A. Not about what, Mr. Stewart. It would be the income Mr. DeLucia paid a tax on for that year, his net taxable income.

1294 Q. I don't want to go into exact dollars and cents. As I remember, it ran around eight thousand, didn't it? A. Eighty-four hundred and some odd cents.

Q. Yes. You could be wrong about that, so far as the amount of money he actually took in as income, couldn't you? A. I could not be wrong so far as his net taxable income was, sir.

Q. You are assuming he paid honestly on every cent he made? A. That is the only inference I can make, that the man filed the proper return.

Q. Now, when you found from the court records that he made no returns between 1920 and 1934, you concluded that you could draw some conclusions from that based upon the fact that if he had owed a certain amount, the law would have required him to file a return, isn't that right? A. I certainly gave Mr. DeLucia the benefit of any doubt in that respect, sir.

Q. Let us see if you did.

You assumed that during those years he was being
1295 honest with the Government and he didn't make any more than enough for a man to make and honestly not file a return under the law, isn't that right?

A. The only assumption I made, sir, was that the man, if he had a taxable income, would have reported it. Since he didn't, I assumed he was proper in not reporting; that he did not earn a sufficient amount in order to have filed in the period 1920 to 1933.

Q. I thank you. That is what I want to get before this jury, what you were assuming when you came to your conclusions.

If you were wrong in your assumptions, you will agree with me the jury can take a different assumption? A. Mr. Stewart, I could find no traceable assets or any sources of income which would indicate that Mr. DeLucia had any taxable income in those years, sir.

Q. When you say you couldn't find, you mean you are just looking at the evidence that is before Judge
1296 Miner and this jury? A. This—

Q. That's all you have a right to do. A. At this particular time, that's right, sir.

Q. Now, I don't remember clearly when you said that you started out with the Revenue Service, but, at the time you have been working as a Revenue man, you have familiarized yourself with the federal law, haven't you, connected with income tax? A. Yes, I have, sir.

Q. And you have looked into the history of it, even when that history goes back beyond the time you were with the Service and you know something about the history of the tax laws, don't you, sir? A. To some extent, yes, sir.

1297 Q. Well, I will remind you of something. The income tax law was passed along about 1913, wasn't it? A. That is right.

Q. And today, Mr. Mahon, Uncle Sam wants tax on money, no matter how you get it, legally or illegally, isn't that right? A. Well, I don't know that we should go that far on it, sir, but the tax laws have increased, the tax rates have increased, if that is the point you are trying to make.

Q. No, as to the character of the money. Today, let's take today, a taxpayer, no matter where he gets his income from, whether it is legal or illegal in operation, there is a tax due if it is income, isn't that right? A. If it is taxable income, of course, there is a tax due.

Q. And your department and the law require you to regard income which is illegally obtained, such as by gambling—that is taxable, isn't it? A. That is taxable income, that is right, sir.

Q. Now along about the time that the tax laws
1298 went into effect, along about 1913, we had prohibition about that time too, didn't we? A. Well, that predates me a little bit, Mr. Stewart, but there was prohibition, I would think from 1918 to 1932, some dates like that, sir.

Q. Yes, and your tax laws are not only on the books as laws, but you have rules and regulations in your Bureau, do you not? A. Yes, sir.

Q. And you look to them to sort of help you construe the tax law? A. That is right, sir.

Q. Isn't it true that way back in those early days, during prohibition days, there was a time when it was

the opinion of those that were in the tax service that money obtained illegally was not taxable income? Isn't that right? A. Mr. Stewart, I cannot tell you what somebody's opinion was back in 1918 to 1932 or 1933 possibly. I was not in the Revenue Service. I wouldn't know what their opinion was, sir.

Q. If I told you now—of course, my time goes back further than yours—if I told now that there was a regulation or a directive sent out by your Department to the effect that people who were obtaining money illegally did not have to pay tax on that money, you wouldn't say I was mistaken, would you? A. That would be conjecture on my part, sir. I know of no specific instruction that you speak of, Mr. Stewart.

Q. You know certain people during that prohibition time were prosecuted for failing to file any income tax return at all. You know that is true, don't you?

By Mr. Barnett. Your Honor—

By The Court: I will sustain the objection.

By Mr. Stewart:

Q. I noticed as you were answering questions for Mr. Barnett that you referred to Mr. Klein's report and you read off some figures and you read them like as if that was the total cash, being cash-in-pocket, cash-in-vault and cash-in-bank, and you have given us your construction of Mr. Klein's testimony, haven't you? A. I believe I followed Mr. Klein's testimony, sir.

Q. You could be mistaken about that, couldn't you? A. I don't think so, sir.

Q. Well, I think you are because Mr. Klein said that he didn't ask him for any net worth statement. He didn't ask him if that was the total cash he had. You remember I brought him back for that purpose? A. I wouldn't quite agree with you, Mr. Stewart, on that.

Q. You wouldn't agree with me as to what Mr. Klein said? A. I think the record would indicate what he said, sir.

Q. Well, I do, too, and I will stand on the record, but I just want to see if you haven't made a mistake in drawing a conclusion that is not warranted from Mr. Klein's testimony. A. Well, would you restate your question, sir?

Q. All I want to know is that you are giving this jury your estimate of what Mr. Klein said, aren't you, and based on that you are concluding that Mr. Klein said that Paul DeLucia told him that that was all the cash he had? A. I did not use the words "all the cash he had," Mr. Stewart. I said Mr. DeLucia told Mr.
1303 Klein that this was the cash he had and he broke it down into three categories, sir.
1304 Q. Yes, but it makes a lot of difference whether it was all he had or whether or not he had some more, doesn't it? A. I gave him a very substantial amount, far in excess of Mr. Klein's figures, sir.

Q. But that isn't up to you, whether you are going to give it to him or not. It is a question of what Mr. Klein said. Mr. Klein di dnot undertake to start you off with a place where Mr. DeLucia said this is all I have got. You don't understand Mr. Klein's testimony to be such, do you? A. I didn't use Mr. Klein's testimony to that extent, sir.

Q. Did you use it at all? A. Only to the admission made by Mr. DeLucia as to cash on hand.

Q. Mr. DeLucia didn't tell Mr. Klein that that was all the cash he had, did he, according to the testimony?

A. From what I understood of Mr. Klein's testimony, Mr. DeLucia said my cash on hand is, and then he proceeded to give him cash in vault, cash in bank and cash in pocket. That to me would indicate that that was

1305 his total cash on hand at that time, if that is your question, sir.

Q. That is right. That is your construction of Mr. Klein's testimony, isn't it, that you have just given us?

A. It is not a construction of Mr. Klein's testimony. It is a construction of what is shown in Mr. Klein's report.

I didn't refer to Mr. Klein's testimony, sir. I referred to Mr. Klein's report, which is in evidence and which speaks for itself.

Q. Yes, I know what is in the report, and you do too. You have got a good memory, and there is no place in Mr. Klein's report where Mr. Klein reports to his superior that the amounts stated are all the cash. There is no such thing in the report, is there?

If you say there is, we will get out the report and look it over. Now there is no statement in the report like that, that that is all the cash, is there? A. We can refer to the report, Mr. Stewart, if you wish.

Q. But you remember it? A. I would say this:

1306 That the cash as indicated in Mr. Klein's report would indicate a statement of total cash on hand, sir, fo rthe years 1938 and 1939.

Q. But Mr. Klein doesn't say that in his report, does he? A. I would rather refer to Mr. Klein's testimony in the record, sir.

Q. He didn't say in his testimony that Mr. DeLucia told him that that was all the cash he had, did he? A. I would rather refer to the actual testimony given, sir.

Q. So would I. A. It is not a question of memory.

Q. I a mtrying to get your memory of it because your memory is what yo uare using as a basis for your opinion, isn't that right? A. No, sir, I have no opinion on that. I merely stated what Mr. Klein reported—

Q. We will leave it at that then. A. (Continuing) —the information he received from Mr. DeLucia in comparison with the cash on hand balance that I credited Mr. DeLucia with for the same years, sir, that is all. Nothing more.

1307 Q. If you have overlooked important pieces of testimony and just ignored them and disregarded them, of course that lowers the value of your opinion, doesn't it? A. I don't believe that happened, sir.

Q. Well, let's see if I can remind you of some place where it happened.

How much cash did you say from your various figures, how much Mr. DeLucia have at the end of 1934? A. At the end of 1934 I credited Paul DeLucia with no cash on hand, sir.

Q. During 1934, what cash did he have available? A. His gross funds available during 1934 were $8,473.68.

Q. Did you hear Mr. Graham testify here, the architect—oh, I mean Mr. Garden, the architect? A. Yes, sir.

Q. Did you hear him say that $180,000 was spent in the Irish—it wasn't Irish, was it? A. No, I am Irish, sir.

Q. In the Italian Village. Do you remember that? A. I heard Mr. Garden testify that the total investment

1308 was $180,000—

Q. And you heard Mr. Garden— A. (Continuing) I am not finished, sir.

Q. I guess we all heard Mr. Garden's testimony. A. But you didn't hear what Mr. Mahon has to say.

Q. You just throw that all out? A. We did not hear Mr. Garden testify as to any investments made by Mr. DeLucia in any dollar amount, sir. He merely said the total investment or cost of the Italian Village was $18,000, and I did not put any construction on what Mr. Garden said.

Q. But you must. You can't ignore the fact that Paul DeLucia had large sums of money, and some of it in thousand dollar bills, and brought it in and laid it on the table. You can't ignore that, can you? A. We had not had any testimony as to what part of that money represented Mr. DeLucia's, if any of it did, sir. It certainly has not been used in our schedules as an expenditure.

Q. I know it hasn't been used in yours, but you don't regard that as his money because you have no evi-
1309 dence here that it was his money, is that right? A. Because I could not prove that it was his money, sir.

Q. All right. You are careful about that, aren't you? A. I do not speculate on either income or expenditures, sir.

Q. You were here when Mr. Ruggaber testified, weren't you? A. I was.

Q. Now don't tell me you are not ignoring his cross examination, are you? A. No, sir.

Q. Will you turn to your figures and tell us on the readjustment how much available money Mr. DeLucia had out of the so-called extortion money? It runs two hundred some thousand, according to your figures, doesn't it? A. The total additional income assessed to Paul DeLucia by Revenue Agent Williams Ruggaber for the years 1935 through 1938 totaled $227,781.46.

Q. You see, I am not an accountant, but I think
1310 I can prove to you that you have arbitrarily taken a figure contrary to Mr. Ruggaber's testimony.

See if I don't state this correctly. I am going to try to sum up Mr. Ruggaber's testimony on cross examination to you. A. All right.

1311 Q. He told me that in his report he gave Paul DeLucia and Nitto and Campagna, each of three individuals, he gave them credit for having gotten $404,000.00 apiece out of the movie money, isn't that right? A. That is right.

Q. All right. Then Mr. Ruggaber said that he went back over the reports made to the Government by Paul DeLucia, and where he found sums in there, $79,000.00, $78,000.00, under miscellaneous, he gave Paul DeLucia the benefit of the break and took it for granted, for the purpose of figuring out the tax, that that miscellaneous income was movie extortion money. Wasn't that Mr. Ruggaber's testimony? A. That is right.

Q. All right. So that reduced the tax that Paul DeLucia had to pay according to Mr. Ruggaber's figures, isn't that right? A. That is right.

Q. But that was more or less arbitrary on Mr. Ruggaber's part, was it not, because in answer to my question he practically admitted that Paul DeLucia could have had the whole $404,000.00, and in addition to that he
1312 could have those moneys that were reported under miscellaneous items. That is true, isn't it? A. No, sir.

Q. Were you here when I asked Mr. Ruggaber and said you couldn't follow the money, after you found it was in the hands of Mr. Bioff and he said he turned it over to these other fellows, you couldn't follow how that was divided up, how much Paul actually got, could you? As far as you know Paul got the $1,800,000.00.

Were you here when I asked that question, and Mr.
1313 Ruggaber told me yes? A. I remember some general line of questioning like that, sir. I wouldn't say I remember the exact question, though.

Q. All right. But if it is a fact that Paul DeLucia got $1,800,000.00—

By Mr. Barnett: Your Honor, that isn't the fact.

By Mr. Stewart:

Q. (Continuing)—then we are wasting our time here,

aren't we? A. That is conjecture.

By Mr. Barnett: There was no such testimony whatsoever, your Honor.

By Mr. Stewart: I will leave it to the jury whether there was any such testimony.

By Mr. Barnett: There wasn't.

By Mr. Stewart:

Q. It is true, isn't it, that judging the testimony, someone who had heard it, like the jury, if they come to the conclusion that Mr. DeLucia got $1,800,000.00 at that time, why, we are wasting our time with a lot of these figures, aren't we? A. There was no such testimony to that

1314 effect, Mr. Stewart.

Q. That is your statement. A. That is my statement, right.

Q. All right. I will stand on mine and you will stand on yours, O. K.

Now, will you turn to one of your exhibits there—I will tell you the one. I can't tell you the number, but you were talking about a man who came here from New York, and he has an Italian name, something like Circella—Now if I understand your papers correctly, the large sheet that you have in your hand, you have an item down there, and then you put in an exhibit number, and you trace it back into the smaller exhibits, isn't that right? A. That is right, sir.

1315 Q. Now tell us the amount that you have for this Italian who was the broker, insurance broker, who came here from New York. A. Mr. Corcillo?

Q. That is right. A. Mr. Corcillo received $2,000 as a premium on a criminal bond issued in the name of Paul DeLucia in reference to his bonding at the time of the extortion trial, sir.

Q. And Mr. Dunne testified that he received $2,000 from the same? A. That is right, sir.

Q. Mr. Corcillo mentioned the fact that a $10,000 fine was paid, and you have got that on your sheet, too, haven't you? A. That is right, sir.

Q. Now you are basing your sheets on the evidence, as you told us, aren't you? A. That is right.

Q. Did you hear that agent who came here from New York, Mr. Corcillo, say that Paul DeLucia gave him any money? A. He said the money had been paid in to
1316 him by Joseph Bulger.

Q. Yes, and is that good enough for you to trace it right back without any further evidence that it was a payment by Paul DeLucia? A. There is no doubt in my mind it was a payment by Paul DeLucia.

Q. Now you are giving us your judgment of how to construe the testimony, aren't you? A. No, sir. I am telling you what my investigation determined, Mr. Stewart.

Q. Yes, but I want to make sure that you are basing your investigation, what you are testifying to, on the witnesses heard by this jury. A. That is right.

Q. All right.

Now I have correctly summed up your written report, haven't I, that your basis of your information concerning the payment of the $2,000 premium and the $10,000 fine is based on the testimony of this Mr. Corcillo? A. On the $2,000 bond premium, yes.

Q. And on the $10,000 fine? A. On the fine, that that represents money paid in for a fine bond for Paul
1317 DeLucia as a result of that conviction in December, 1943, that is right, sir.

Q. You also make reference to the fact that Mr. Smith, one of your Revenue agents— A. Special Agent.

Q. Pardon me? A. Special Agent.

Q. Yes. He talked to Paul DeLucia down in Florida and Paul told him that Paul had put up $25,000 into a common fund and put it into the hands of Charlotte Campagna? A. That is right.

Q. And that is one of the bases of your financial report here, isn't it? A. Yes, I used that $25,000, sir.

Q. Haven't you done a little duplicating there? If I remember Mr. Smith's testimony, Mr. Smith only testified to $25,000, didn't he? A. That is right, sir, but there is no duplication, Mr. Stewart.

Q. No, but if I wanted to construe it, I could construe it that Paul is telling Mr. Smith the total cost of that
1318 trial? Couldn't I just as reasonably take that view of it? A. No, sir.

Q. It isn't reasonable, according to you? A. We both know better than that, sir.

1319 Q. Well, I don't know any better.

Now let's go to Mr. Armstrong. I want to get before the jury how your mind operates when you are drawing these conclusions. I looked at the figure sheet that you have before you, the large summary, over the noon hour, and I am not sure that there is reflected on there $7,500.00, and that is the money divided by two that Mr. Eben says that he received.

Have you got that on your total sheet?

A. Mr. Eben's legal fees, sir?

Q. That is right. A. No, sir, I don't have that on here as such.

Q. Do you have it in any way? A. All I do is apply $25,000.00. Out of the $25,000.00 stated by Mr. DeLucia to Special Agent Tom Smith, I apply $20,000.00 out of that to the year 1943 as being Mr. DeLucia's expense in connection with the extortion trial in New York, sir.

The balance of $5,000.00 is carried forward into 1947, when in November 1947 Mr. DeLucia expended another $5,000.00 in legal fees, sir.

Q. Now you have ignored Mr. Eben's testimony entirely, haven't you? A. I have not ignored it, sir. I
1320 have not taken advantage of it, let us put it that way.

Q. Do you think it is your function to go over the evidence and either take advantage or disadvantage? I mean, that is not your job, is it? A. In this particular instance, sir, I am giving Mr. DeLucia the benefit of any doubt, question, or anything else, sir.

Q. I hope the day never comes that we have to wait for you to give us the benefit of things because I don't think that is your function.

You just disregarded it, although it is in a report, isn't it? It is in Mr. Armstrong's report. He, without any ifs or ands about it, charged DeLucia with $7,500.00 based on his investigation, isn't that right? A. No, sir. I think if you were to read Mr. Armstrong's report, he sets it up as a possible adjustment.

Q. He sets it up as something that was spent by DeLucia, doesn't he? A. No, he sets it up as a possible adjustment to Mr. DeLucia's 1934 return. However, Mr.
Armstrong's report was what we call a no-change
1321 report, sir, and there was no additional assessment or anything of that nature occurred.

Q. All I am trying to accomplish before the jury is that you go ahead and use your judgment concerning the evidence as to what you are going to include and what you are going to exclude, depending on what you think of the
value of the evidence? A. No, sir, that is not a fact.
1322 Q. Well, you will find another item on your big sheet there, way over up to the right, $11,000, for some cars that were purchased? A. That is right, sir.

Q. You know from the other evidence that is here in the case that Mr. DeLucia was in the penitentiary at the time that purchase was made, don't you? A. That is right, sir.

Q. How do you come to the conclusion Mr. DeLucia's money went into those cars? I mean, point to the evidence that shows me where it did? A. Well, as of the end of December 31, 1946, Mr. DeLucia's possible cash on hand was $102,267.01. Certainly he was able to spend $11,000 on purchases of cars, sir.

Q. That gives us a pretty good idea of your thinking. Because he had the money and was able to do it, the fact that he was in the penitentiary and didn't do it, wouldn't make any difference to you. Isn't that right? A. I have witnesses to that effect, sir.

Q. You didn't bring them here, did you? A. I
1323 believe the item was stipulated by you.

By Mr. Barnett: There was a stipulation.

By Mr. Stewart: I stipulated that that money was spent, and I reserved the fact that they had to connect it up with Mr. DeLucia.

Do you remember?

By Mr. Barnett: We have a stipulation that those cars were acquired by the family of Paul DeLucia.

By Mr. Stewart:

Q. That is something different than what we are talking about.

I think we have got a pretty good idea of how you went about this. A. Oh, no, sir.

Q. Yes, I do.

Can you tell us why they assigned a man from New York? They have a lot of Revenue agents here. Who gave you the assignment to follow after this case? A. I
was assigned out here by Assistant Regional Com-
1324 missioner of Intelligence, Frank J. Kennedy, of the New York office, sir.

Q. You get $12 a day while you are here, sir? A. $11 a day, and I think we are entitled to $12 when we are on trial.

1325 *Redirect Examination*

By Mr. Barnett:

Q. Mr. Mahon, Mr. Stewart asked you about the testimony from Bradley Eben and from Mr. Mack regarding sums paid to them in connection with this extortion trial and asked you if you had not duplicated that expenditure on your summary schedule.

Will you tell us again how you treated that? A. The only figure for legal fees that I used was the $25,000.00 admission made by Mr. DeLucia to Special Agent Tom Smith, the fees paid to Mr. Mack and to Mr. Eben, whose testimony was—from Mr. Eben—to the extent that it had been paid out of a composite sum for the defendants.

Q. You, then, treated those payments as having been made from this alleged fund held by Charlotte
1326 Campagna? A. That is right, sir.

Q. Now, there was a mention made of a Mr. Corcillo's bond premium. A. Yes.

Q. Did you consider that a legal fee? A. No, sir. I considered that a personal expense of Paul DeLucia. It was for a criminal bond in the name of Paul DeLucia.

Q. Now, there was some question asked you about automobiles that were purchased in 1947 while Mr. DeLucia was in prison.

Did you examine the income tax returns of Mr. DeLucia for the various year's involved? A. I did, sir.

Q. Did you find Nancy DeLucia as a dependent upon those returns? A. I found that Nancy DeLucia was a dependent on those returns, as well as Mr. DeLucia's three children, Marie, Anthony and Paul.

Q. Mr. Stewart asked you concerning sums that were paid by Mr. DeLucia into the Italian Village in 1934. Regardless of whose money that was, did Mr. DeLucia have any of that money left after the bankruptcy of the Italian Village in 1935?

1327 By Mr. Stewart: I object to that. It isn't a question of what he had left. It is a question of having the money.

By Mr. Barnett: I think that is a proper question.

By Mr. Stewart: Your Honor, Mr. Barnett is getting beyond the realm of it. The jury heard the evidence. He shouldn't go ahead and ask—

By The Court: I think they heard both sides as to before and after. I will let him answer.

By The Witness: May I have the question again?

By The Court: Did he have any money left after the bankruptcy.

By The Witness:

A. No, sir. It was a total loss.

By Mr. Barnett:

Q. Did you hear the testimony of the witness Armstrong, the revenue agent? A. I did, sir.

Q. And did you examine the revenue agent's report prepared by Mr. Armstrong? A. I did, sir.

1328 Q. And, according to Mr. Armstrong's testimony, how much cash on hand was reflected on the work papers of Mr. Bernstein concerning Mr. DeLucia's returns for the years 1941, 1942, 1943, at the end of each year?

By Mr. Stewart: I object to that. That is not redirect examination, your Honor.

By The Court: I think that is correct, it is not proper redirect examination.

By Mr. Barnett: Your Honor, he inquired about Mr. Armstrong's report.

By The Court: I beg your pardon?

By Mr. Barnett: He inquired about Mr. Armstrong's report.

By Mr. Stewart: Not that part of it.

By The Court: Oh, I will let him answer.

He may answer.

1329 A. Mr. Armstrong's testimony was to the effect that Mr. DeLucia had approximately a $2,000 balance at the end of the year.

Q. A $2,000 balance in what? A. In his bank account in the Northern Trust Company as of December 31, 1941, and as of December 31, 1942, and as of December 31, 1943, and that his cash on hand at the end of each of these respective years was in the neighborhood of $200.

Q. You mean cash on hand in addition to the cash in bank? A. To cash in bank, making a total cash on hand, at the end of each year as of December 31, 1941, 1942 and 1943, all being an average of $2,000 a year.

1330 RICHARD F. STONESIFER, testified as follows:

Direct Examination

1331 Will you tell us your full name, please? A. Richard F. Stonesifer, S-t-o-n-e-s-i-f-e-r.

Q. Where do you live, Mr. Stonesifer? A. Chicago, Illinois.

Q. What is your occupation? A. Tax accountant.

Q. Can you speak up just a little bit? A. A tax accountant.

Q. Where are your offices located? A. 38 South Dearborn Street, Chicago, Illinois.

Q. Are you engaged in that profession by yourself?

A. Yes sir, I am.

Q. How long have you been so employed? A. Almost three years.

Q. And prior to that, what was your occupation?

A. I was an agent of the Internal Revenue Service.

Q. How long were you an Internal Revenue agent?

A. 16 years, a little over 16 years.

1332 Q. During the course of your employment as a revenue agent, were you assigned in Chicago, Illinois?

A. Except for the first year and a half, why, the balance of my service was in Chicago, Illinois.

Q. And during the course of your duties as an Internal Revenue agent, did you investigate the income tax liability of Paul DeLucia for the years 1948, 1949 and 1950?

A. Well, I was assigned to be an acting special agent.

Q. Well, did you investigate the income tax liability?

A. Yes, sir.

Q. You were about to tell us about the difference between an Internal Revenue agent and a special agent, were you? A. Well, I was assigned to be an acting special agent and it was in the course of my duties as acting special agent and subsequently special agent, that I investigated the income tax returns you are referring to.

Q. I see. Now, did you have the original returns in your possession at the time you were making your 1333 investigation? A. Yes, sir, I did.

Q. And on the face of the returns, was the preparer of the returns disclosed? A. Yes.

Q. Who was the preparer of the returns for the years 1948, 1949 and 1950? A. Eugene Bernstein, 77 West Washington Street, Chicago.

Q. Now, did you have a meeting with Mr. Bernstein in connection with your audit of the taxpayer's affairs in January of 1953? A. Yes, I did.

Q. And where did the meeting take place? A. At his office on the twelfth floor of 77 West Washington Street.

Q. And who was present?

A. Special Agent—well, Mr. Bernstein was present and Special Agent George Currant and myself.

Q. Can you fix the approximate date of your first contact? Can you fix the date in January? A. I think it was January 28, 1953.

Q. Will you tell us what conversation you had with Mr. Bernstein at that time and place? A. I asked
1334 Mr. Bernstein for the records from which he had prepared Mr. DeLucia's 1948, 1949 and 1950 returns and he presented them for me and—

Q. And would you describe those records to us, please? A. Well, they consisted—the records that he gave me consisted of two red leatherette bound loose leaf books. They were about ledger size and one contained a journal and cash receipts record and a cash disbursements record. The other contained trial balances and a ledger, a general ledger.

Q. Did you ask Mr. Bernstein to explain the books to you? A. I asked him from what information and data that they had been prepared.

Q. And what did he tell you about that?

A. He said that the cash disbursement record had been prepared from check stubs of checks issued by Mr. DeLucia in payment of the disbursements listed on the record and he said the cash receipts record had been prepared from bank books and from written and printed
1335 memoranda and data given to him by Mr. DeLucia for that purpose.

Q. Any oral information? A. Yes, verbal information also.

And, he said the journal also had been prepared from written, printed and verbal information and data given to him by Mr. DeLucia for that purpose.

The ledger ones—the data in the ledger, then, was copied from the data in the journal, cash disbursements and cash receipts books.

1336 Q. Will you explain to us the difference between a journal and a ledger? A. Well, original entries are made in a journal or a cash receipts book or a cash

disbursements book and they are usually entered in chronological order and then, in a ledger, there is an account set up for each type of expense, each type of income, each type of asset and each type of liability and the data in the journal cash receipts and cash disbursements book is copied into the ledger, classified into the ledger according to what account it belongs to.

Q. Is that called "posting to the ledger"? A. That is called "posting," the process of copying.

Q. Now, did you have any conversation with Mr. Bernstein about these supporting documents for the books?

A. Well, I asked him if we could also have the data from which the books had been prepared, the check stubs, bank book, and written and printed data, and he said that it was not available to us.

1337 Q. Did he use that phrase, "not available" to you? A. Well, I don't remember the precise words, but it had the same meaning, that we could not have it to go over and audit.

Q. Did you have any conversation about books of record for prior years, prior to 1948? A. I asked him for records of prior years as far back as he had them, and he said that the records prior to, I believe, August or September of 1947 had been destroyed and that the records for 1947 could be supplied at a later date; he didn't have them available at that time.

Q. Now, did you do anything in connection with the books while you were there? A. Yes. Mr. Currant and I, Mr. Bernstein provided a desk or desks for us, to work on, and we proceeded to take an audit of the books and we were there, I believe, four or five days, doing that.

We both took off certain information and until we left, I believe it was February 2nd or 3rd or 4th or somewhere in there.

1338 Q. Did you make any transcriptions of the books?

A. Yes. We proceeded to transcribe the books and about the fourth or fifth day that we had been there, Mr. Bernstein noticed that we were transcribing the books and he told us not to do any more transcribing and we stopped, then, and simply made notes for the remaining time that we were there.

Q. Now, will you tell us, will you describe for us how the books were set up, that is, what was recorded in the books, and how it was recorded? A. Well, the books were a double entry set of books. That is, all cash was entered, or, rather, there were entries in the cash book for cash deposited and it was an ordinary set, a double entry set of books.

There were opening journal entries setting up the sum of the farm assets, or setting up the farm assets, and I would say they were a double entry set of books.

Q. Were there different accounts in the book?

A. Yes, there were.

Q. What accounts were there? A. Well, there
1339 was an account for a bank account, an account for various farm building machinery and equipment. There were liability accounts for loans that Mr. DeLucia had made.

There were income accounts for proceeds from sales and there were expense accounts for the various types of expenses that he had paid.

Q. Now, was there an income account? A. Well, yes, there was. There were several income accounts.

Q. And there was a cash receipts portion of the journal, is that correct? A. Yes, there was.

Q. Now, there were cash receipts recorded in there, were there not? A. Yes, cash receipts were recorded.

1340 Q. Now, were the sources of the cash receipts

reflected on the books? A. Well, in many cases, they were; in some they weren't. There was a substantial amount of cash receipts which were recorded in the cash receipts book but they were not credited to income; they were credited to a personal account of Mr. DeLucia's and the source of those receipts was not shown.

Other cash receipts from the sale of farm products or farm equipment, the source of those receipts was shown with some exceptions. By "source" I mean who the product was sold to and, consequently, who paid the money.

Q. Now, you used the terminology that there were cash receipts which were credited to Mr. DeLucia's personal account, did you not? A. Yes, sir.

Q. What is the meaning of that, in layman's language?

A. Well, cash received falls into—if it is income, why, it is one class; if it is received because of money
1341 borrowed, it is another classification. We usually can ascertain what class it falls in by the source it was received from. These—

Q. What is the effect of it being credited to Paul DeLucia's personal account? A. Well, it was not included in the income that was subsequently reported on the tax return.

Q. I see. Do you recall approximately how much cash receipts were accounted for on the books in that manner in the year 1948? A. Approximately $113,000.00.

Q. And do you recall for the years 1949 and 1950?

A. 1949, I believe, was eleven or twelve thousand dollars and I don't recall 1950 too well. I would say it was in the neighborhood of $20,000.00.

Q. Now, in order to determine net taxable income, is it necessary to know the source of all receipts? A. Yes, it is.

Q. Were these books adequate to determine net taxable income? A. No, sir, they were not.

Q. Now, Mr. Stonesifer, you have related a conversation with Mr. Bernstein occurring on or about the latter part of January, 1953, and you told us that you were
1342 there for some several days thereafter.

Have you substantially included any conversations with Mr. Bernstein in that period of time, so far as you can recall? A. I am sorry, but I couldn't quite hear you.

Q. Have you substantially told us about the conversations had with Mr. Bernstein during that three or four or five day period, so far as you can recall? A. Yes, I have. Yes, sir.

Q. Now, did you have another meeting with Mr. Bernstein? A. Yes, sir, I did.

Q. Was that in March, 1953? A. Yes, sir, that was about March 18th of 1953.

Q. Where did that meeting take place? A. In his office, 77 West Washington Street.

Q. Who was present at that meeting? A. Special Agent Paul Tillotson and Mr. Bernstein and myself.

Q. Will you tell us what the conversation was on that occasion? A. I asked Mr. Bernstein for the 1947
1343 records from which Mr. DeLucia's 1947 income tax return had been prepared and he turned them over to me.

Q. What did those records consist of? A. Well, there were two or three sheets of plain white letter sized paper on which a number of entries had been made that were sheets of 14 column accountant's paper and there was a communication from an accounting firm by the name of Bandsley and Kaner, and that comprised the records.

Mr. Bernstein said that the entries on the white sheets had been made from Mr. DeLucia's check stubs, checks that he had issued in payment of 1947 items.

And, the data, then, on those white sheets had been transferred to the yellow columnar sheets and classified as to the type of expense or as to the type of expenditure that they represented.

The communication from Bandsley & Kaner who were a public accounting firm, was a sort of a summary account of what Mr. Curry, who operated Mr. DeLucia's farm
1344 in 1947 up until, I believe, September—what he owed Mr. DeLucia and what Mr. DeLucia owed him in the operation of that farm in 1947.

1345 Q. Did you have any conversation concerning supporting documents? A. Well, again, I asked Mr. Bernstein for the data from which he had prepared the information on the white sheet and he said that it was not available to me.

Q. What do you mean he said it was not available to you? A. Well, he said I couldn't have it.

Q. Did you have any conversation about prior records on this occasion? A. Yes. I asked him again, at that time about records for years prior to 1947 and he said they had been destroyed.

Q. Now, were you able to verify whether or not the 1947, 1948, 1949 and 1950 returns of Mr. Paul DeLucia were prepared from these various books which you have testified to? A. Yes, I was.

Q. And were they prepared from those books? A. Yes, sir.

Q. Now, you have stated that the books were inadequate to reflect a net taxable income? A. Yes, sir.

1346 Q. For what reasons were the books inadequate to reflect net taxable income? A. Well, the cash receipts credited to Mr. DeLucia's personal account in the ledger did not indicate the source from which they were received.

Another thing, the opening cash balance on hand was not recorded on the books. That is, the cash on hand that Mr. DeLucia may have had.

The fact that the data, the written data, checks, and so forth, check stubs, were not available to support the records from which it was prepared, made it incomplete because the records couldn't be verified as being accurate.

Then, there were sales of some farm products which the books didn't show who the products were sold to; they just said the nature of the income, such as "Dairy income" and similar items.

Then, as I recall, there were also some disbursements which the books did not show who received the money, who the payee was.

Those were the respects in which I considered the
1347 books inadequate to determine the correct taxable net income.

Q. Were the canceled checks at any time made available to you? A. No, sir, they were not.

Q. Would that have a bearing on whether the books were adequate also? A. Yes, it would.

Q. What bearing would it have? A. Well, it would verify disbursements as to who received disbursements. In cases where the payee was not named on the books, it would also verify that the payee named on the books was the one who received the cash and received it in that year and in that amount.

Q. You made reference to opening cash not being set up on the books? A. Yes.

Q. Under what circumstances would it have been necessary to set up opening cash on the books? A. Well, in the absence of the substantial cash receipts being recorded, without any source of those receipts being shown, it
1348 would be necessary to have an opening cash balance

recorded and to know the source of that opening cash balance.

1349 Q. Now during the course of your investigation—

A. (Continuing) When I speak of cash balance, I want to say I mean cash on hand, not cash in bank.

Q. I see. Now in the course of your investigation of Mr. DeLucia's income tax liability, did you have any conversations with Mr. Joseph Bulger? A. Yes, I did.

Q. Did you have such a conversation in June of 1953?

A. Yes, sir, I did.

Q. Where did the conversation take place? A. In Mr. Bulger's office at 139 North Clark Street, Chicago.

Q. Who was present at the conversation? A. Special Agent Harry P. Stanek, and Mr. Bulger and myself.

Q. Will you state the conversation, please? A. I asked Mr. Bulger about what insurance that he had handled for Mr. DeLucia, during the period from 1939 through 1951.

He said that he had handled all of his fire insurance or all of his insurance on his River Forest residence;

1350 that he had handled some life insurance in the Italo American Union; and that he had handled some life insurance Mr. DeLucia obtained from the Northwestern National Insurance Company.

I asked him whether he had handled any insurance on the Kendall County farm or the Long Beach home or the automobiles, and he said he had not.

Then I asked him, I wanted to get a list of the agencies through which the insurance was placed and the amounts of the premiums and the dates that they were paid, and Mr. Bulger said that he would compile this information and submit it to me at a later date.

Then I asked Mr. Bulger about a number of transactions that he was connected with Mr. DeLucia in, such as, well, I asked him—I had a number of transactions that I asked him about.

Q. Go ahead. A. I asked him whether during 1939 to 1951 he had received any legal fees from Mr. DeLucia or any expense reimbursements from Mr. DeLucia in connection with the purchase of the Kendall County farm
1351 and in connection with the fire loss at Long Beach home and in connection with a personal injury that Mr. DeLucia has sustained in an elevator accident; in connection with real estate tax assessments on all three properties, personal property tax assessments on all three; in connction with loans that Mr. DeLucia had made from Mr. Hugo Bennett; in connection with a loan that he had applied for on his farm with the Metropolitan Insurance Company; and in connection with three or four court appearances that Mr. DeLucia had made in 1948, 1949 and 1950; and also in connection with the sale of the farm.
1352 Mr. Bulger said that he had not received any fees on any of these transactions, except a fee of $500 in connection with the sale of the Kendall County farm, and that he had not received any expense reimbursements on any of these transactions.

I then asked him also about whether he had received fees or expense reimbursements in connection with the New York movie extortion trial, and he said he had not.

I asked him about the payment of the fine, $10,000 fine that was assessed against Mr. DeLucia in connection with that trial. He said that as he recalled it, the fine was paid out of funds which were with the bail bonding company.

I believe that is all I can recall of the specific transactions that I asked him about.

Then I asked him whether there were any other transactions that he had had with Mr. DeLucia that I hadn't covered, and he said no, there were none.

I think that was all there was to that visit.
1353 By Mr. Barnett: Your Honor, I see it is exactly 4:30 now, and I have some other matters to go into with this witness.

By The Court: All right.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

By Mr. Stewart: Judge, we want to obtain any statements that this witness has made.

By The Court: Please don't discuss the case with anyone, even with the lawyers, Mr. Witness.

By Mr. Stewart: We would like any reports that you have of this witness under the Jencks case. This is a new witness to the case, your Honor.

By The Court: I am going to read it tomorrow
1354 morning. I will get down a little earlier.

By Mr. Stewart: That is this witness.

By The Court: The report of his statements?

By Mr. Stewart: Yes.

By The Court: When he finishes, I suppose I will read the statement and I will hear you in chambers on the law, and it will be a matter of policy in all similar situations, I believe.

I think we ought to reach a policy on the law, so we will not be groping in the dark on it. I will make my statement on the record clearly, as clearly as I can make it.

Then we will apply it to this witness and all the witnesses in the same situation.

By Mr. Stewart: Very well, sir.

By The Court: I think you are better off, Mr. Stewart, waiting until he finishes so that I can determine if they have any statements, what applies to the law, as I
1355 see it.

By Mr. Stewart: Yes, sir.

1356 May 20, 1958, 10 A. M.

1357 By The Court: Mr. Barnett, I started reading the documents and it may be ten or fifteen more minutes before I finish. Will that be coming up this morning?

By Mr. Stewart: It won't come up during the rest of the examination of Mr. Stonesifer.

By The Court: Let us go ahead. I thought if you went into it I would give you ten more minutes, fifteen more minutes as a recess and finish my reading.

By Mr. Stewart: Supposing we start; how much more time do you need on your direct examination?

By The Court: Let us go ahead and give the jury a recess of ten or fifteen minutes and I will take the time out to read it.

By Mr. Stewart: Do you want to start now?

By The Court: Yes. Bring out the jury.

1358 Q. As I recall, at 4:30 yesterday afternoon you had completed telling us of a conversation with Mr. Joseph Bulger on June 8, 1953? A. Yes, sir.

1359 Q. After that date, on June 8, 1953, did you have a subsequent conversation with Mr. Bulger? A. Yes, I did.

Q. And when did that conversation take place? A. That was November of 1953, about November 4th.

Q. And where did it take place? A. At Mr. Bulger's office. He had moved, in the meanwhile; his office was at 188 West Randolph Street, Chicago.

1360 Q. And who was present at the conversation?

A. Special Agent Seymour Bierman and Mr. Bulger and myself.

Q. What was said and by whom? A. Well, I again asked Mr. Bulger to reaffirm his statement of the earlier interview that he had received no fees or expense reimbursements from Mr. DeLucia for any—on any of the transactions between 1939 and 1950; that the only fee he had received beyond that in 1951 was $500 in connection with the sale of the Kendall County farm, and he said that was right.

And, I had with me statements from our four insurance agencies that Mr. Bulger had previously supplied me the

names of, statements of all the premiums paid by Mr. Bulger to the agencies on insurance on Mr. DeLucia's River Forest home.

I showed Mr. Bulger the statements and he reviewed them and I asked him when Mr. Bulger had paid him those premiums and in what amounts and he said Mr. Bulger had paid the full premiums and they had all been paid, or, in every instance had been paid on or about the due date.

1361. And then I recalled with Mr. Bulger and Mr. Bierman that on our previous interview, Mr. Bulger had said that the $10,000 fine assessed against Mr. DeLucia in the New York movie trial, the movie case trial, had been paid by the bail bonding company and I said that since that time I had acquired additional information which indicated otherwise and he asked what it was and I said that I had learned that Mr. Carmen Corcillo, who was the New York bonding company's agent, had said that Mr. Bulger had paid him $60,000 in cash to cover the fines of all six of the defendants in that trial and he had turned that cash over to the bonding company, which, in turn, had issued its check in payment of the fines.

And then, I had with me a printed copy of Kefauver Committee testimony and I showed Mr. Bulger in that printed copy where Mr. DeLucia had testified that he had paid $10,000 in cash to Mr. Bulger, which was to be used to pay his fine in the trial.

So, Mr. Bulger then said that if Mr. Corcillo had
1362 stated that he had received the $60,000 in cash from Mr. Bulger and if Mr. DeLucia had testified that he had paid the $10,000 to Mr. Bulger, that, Mr. Bulger, would not deny that; that it was the correct fact.

1363. I then asked him again if there were any other transactions that he had had with Mr. DeLucia that we hadn't mentioned or covered, and he said no, there were not.

I then said that I would like to write up all these facts in an affidavit and asked him if he would sign it. He said no, he wouldn't sign it. And I said that possibly we would then have to subpoena him into the Internal Revenue office to take a statement under oath on all these facts.

He asked that we do not do that. He said for the same reason that he didn't want to sign the affidavit, he was afraid that either of them might result in unfavorable professional publicity for him as an attorney.

So that was all there was to that interview that I can recall.

Q. Were you present at a meeting in the Internal Revenue office on September 1, 1954? A. Yes, sir, I was.

Q. Who was present at that meeting? A. Paul DeLucia, William Scott Stewart, Eugene Bernstein, a
1364 stenographer that they had brought with them or a reporter, Thomas Smith of the Internal Revenue office, Special Agent John Scholz of the Internal Revenue office and a Government stenographer by the name of Miss Helen Stahl, and myself.

Q. I will hand you Government's Exhibit 198 for identification, and ask you if that is the printed transcript of that meeting furnished by the defendants? A. Yes, this is the one that I was given as a transcript of that.

By Mr. Barnett: Your Honor, I will offer in evidence Government's Exhibit No. 198.

By Mr. Stewart: No objection, your Honor.

By Mr. Green: There is on behalf of Mr. Bulger. He was not present at that meeting. The same objection as previously on the record.

By The Court: I will [illegible] go into the evidence and reserve my ruling.

1365 By Mr. Barnett:

Q. Mr. Stonesifer, on the facing page of Government's Exhxibit No. 198 it lists as those present: T. N. Smith, Group Supervisor; Richard F. Stonesifer, Special Agent; John A. Scholz, Special Agent; Eugene Bernstien, William Scott Stewart, attorneys for taxpayer.

Was, however, Mr. DeLucia present throughout that conference? A. Yes, he was.

Cross Examination

By Mr. Stewart:

Q. Mr. Stonesifer, you testified to having examined some books in Mr. Bernstein's office, did you not. A. Yes, sir.

Q. And you have described them.

I am handing you Defendants' Exhibits A and B, and ask you whether or not you recognize those as the books that you were talking about.

A. Yes, sir, I would say these are the books. There are subsequent entries made after I was there, but that would follow, I imagine.

Q. How long were you with the Revenue Service?

A. At that time? —

Q. No. What is your total experience with the Revenue?

A. A little over 16 years.

Q. Before undertaking that work, what was your schooling to qualify you for that sort of work? A. I had—I was a high school graduate and had had bookkeeping in high school, and then I had attended evening school at the

1367 Walton School of Commerce here in Chicago, studying accounting, auditing, business law.

Q. During your service, I take it you must have examined books and records kept by thousands of taxpayers, is that right? A. Yes, I think that would be right, thousands.

Q. I assume that you found those books in various conditions; that is, sometimes you would find books that were

kept by trained accountants and other times you would find books kept by people who hadn't any education in bookkeeping, and you would have to put up with what they had.

Isn't that right?

A. Well, I found many types of books, yes.

Q. Including some people that just kept things in a dresser, in a pile more or less loose-leaf, and you had to dig through them, isn't that right? A. No, in my experience I don't think I ever hit that.

Q. You wouldn't call that books at all, would you?

A. No.

Q. But as an expert—you can qualify as an
1368 expert, can't you, as an accountant? A. I think I can. I have had the full education.

Q. I will assume that you can. I want to ask you some questions as an expert.

When you examine a set of books such as those that are before you there, as an expert you can form an opinion as to whether or not they have been kept, opened and kept by someone who knows the subject, isn't that right? You can recognize the work of another accountant?

A. Well, the work of another accountant varies to a considerable degree. It can be good or it can be poor.

1369 Q. Just like lawyers or anybody else, I suppose, but that is what I was trying to bring out.

You knew from your interview with Mr. Bernstein that he had kept these books?

A. Yes.

Q. And you knew something about the background and experience of Mr. Bernstein, didn't you? A. I knew he was an attorney, yes.

Q. You knew he at one time had been with the Revenue Service? A. I believe he had, yes.

Q. You knew he specialized in matters concerning income tax problems? A. Well, I didn't know that he spe-

cialized in it. I had had previous contacts with him on income tax cases.

Q. As a matter of practice in your field, a lawyer in order to practice must be admitted in a special Tax
1370 Court, isn't that right? A. Would you restate that, please?

Q. A man must have some sort of credentials from the Treasury Department and be admitted in the Tax Court to engage in that practice? A. Not to engage in the practice. He must have a Treasury card to represent a client before a Treasury representative.

Q. As a part of this system you require the lawyer to exhibit or deliver to you a power of attorney from the client, isn't that right? A. I believe that is the case at present. That was not followed closely at the time that I was in the Bureau.

1371 Q. And you knew, as a matter of fact, that Mr. Bernstein had been admitted in the various bodies that required admission for a lawyer engaging in that sort of practice; you knew that, didn't you? A. Well, I didn't, of my own knowledge, know that he had appeared in any particular case. I had dealt with him myself in examing taxpayers previously.

Q. Well, did you regard him as a qualified man to handle tax matters? A. Well, I just don't know exactly what you mean by "qualified." He was an attorney representing a taxpayer, to me, and I dealt with him as such.

Q. And you knew he had represented other taxpayers also? A. Yes, sir, with me.

Q. And you saw his work; you had an opportunity to observe his work? A. Yes, sir.

Q. And during the conversation you had with him concerning these books, didn't he tell you that he opened

1372 them for the purpose of helping Paul DeLucia account to the Government with reference to his parole?

A. No, sir. He didn't tell me what purpose he opened them for.

Q. Didn't he tell you that he did that as an advisor and as an attorney in order to help Paul DeLucia keep straight with the Government on his income tax matters? A. No, sir, he didn't tell me that.

Q. Now, you have given, as your opinion here, as I understood your answers to Mr. Barnett—you said that in your opinion these books are inadequate, isn't that right? A. Yes, sir.

Q. I want to explore that a little bit with you and I will tell you that of course I am not a bookkeeper, but, I want to find out some of the reasons upon which you base your opinion.

1373 By the way, did you make that opinion part of any report when you went back to your office or after that? Did you make a report?

First, let me ask you if you made a report concerning these conversations and this examination you made of the books? Did you make a report on that?

A. I made a memorandum on it, yes, sir.

Q. And that is part of the file of the Bureau at the time you were there? A. Yes, sir.

Q. And without looking at your report, Mr. Barnett tells me he is going to give it to me a little later.

By Mr. Barnett: Just a minute. I am giving you a memorandum of the thing he testified to here.

By Mr. Stewart: All right. I will take anything I can get.

By Mr. Stewart:

Q. Did you, in your report, happen to report 1374 that in your opinion, the books were inadequate?

A. I made—

Q. No. You just tell me "Yes" or "No" on that.

A. Any memorandum that I wrote up of the interview or calling at Mr. Bernstein's office, I did not.

1375 Q. And you mentioned—I am not sure whether you mentioned this or not, but, if you didn't, I think you will agree with me that the law is—it is on the statute, is it not, that if the Commissioner of Internal Revenue finds the books and records kept by a taxpayer inadequate, then the Commissioner is free to set up such method as he deems as a reasonable method, based on the circumstances, to arrive at the income. That is true, isn't it?

A. I believe that is so, to more correctly reflect the income.

Q. Now, to your knowledge, did the Commissioner ever make a finding that these books were inadequate? A. Not to my knowledge.

Q. Now, before we went up to your office, and you mentioned who was present—Paul DeLucia and Mr. Bernstein and I—you had been working on this case for some time, hadn't you? A. Yes, sir, I had.

Q. And did that work require you to examine the agent's report as made by Mr. Ruggaber before we went up there? A. Well, I examined that report. It didn't

1376 require me to, specifically.

Q. Well, it is a part of your job to familiarize yourself with the case and, as part of that, you had examined Mr. Ruggaber's report? A. Yes, sir.

Q. And did you examine that before you went over to see Mr. Bernstein and look at these books? A. I don't recall whether I did before or after.

Q. Did you examine it before Mr. DeLucia and I came up into your office on September 1, 1954? A. Yes, sir, I did.

Q. Now, going back to your opinion concerning the inadequacy of the books, I would like to explore that a little further with you.

You know as a matter of law and a practice that over in your Bureau, that where you find the thing in the book which might be valuable to you and possibly against the interests of the taxpayer, you have a right to take that as an admission, do you not?

A. Well—

1377 Q. The point I would like to make is that when you find a taxpayer who is keeping his records, whatever they are, whether you regard them as adequate or in-
1378 adequate, if his income is based on a cash basis, where he admits the cash expenditures are out of income, in so far as his books reflect the cash expenditures, you can deem them adequate for that purpose, can't you? A. I don't know quite what you mean that I can deem them adequate. I have certain criteria to go by as to whether they are adequate or not adequate.

1379 Q. Well, I will bring you right down to the books and find out what your opinion is concerning the entries in there that show expenditures. Let us limit ourselves to that now while we are talking.

You made an investigation concerning them in so far as you could, didn't you?

A. Yes.

Q. And you used what was in Paul DeLucia's books as what we call "leads," isn't that right? A. I did not use them as leads, no. I had made substantial investigation before I saw his books.

Q. And then after you saw the books, you had enough information from the books to be able to investigate to see whether or not Paul DeLucia had spent certain moneys entered in his books as expenditures, whether or not those expenditures actually took place? You did that, didn't you? A. I had information with which to further check expenditures that he had made—not complete information, but information.

Q. What I am leading up to is that you did find
1380 in your investigation that Paul DeLucia, through his attorney, used the same information which was reflected in the books concerning expenditures to make out parole reports.

You found that to be true, didn't you?

A. No, sir. There were many differences between the two, because the parole reports were, well, they were very short summaries. They would have four or five entries on them for the whole month and the books might have 100 entries on them for a month, so, they were just total.

Q. Well, in so far as those totals on the parole reports were checked by you, they were accurate, weren't they, as far as the books showed? A. Well, there were differences between them and the books in the total.

Q. Well, you found out an explanation of the difference because, for income tax purposes, Paul DeLucia couldn't take off his living expenses, could he? A. That would be one difference yes, sir.

Q. That acounted for one difference? A. Yes, sir.
1381 Q. And the parole report, the parole authorities seemed to require that he list his living expenses there, isn't that right? A. Well, I think they wanted to know what cash he took in, what cash he paid out.

Q. That is right, regardless of where— A. Whether it was income or expense or not income or not expense.

Q. Now, turning to the other side of the books, the books showing what came in, you were dissatisfied with them because they didn't contain a statement as to where the money came from, isn't that true? A. There were substantial cash receipts which the source was not indicated—on which the source was not indicated.

Q. Now, you found from your investigation and your examination of the books, that those cash receipts, in so far as they were reflected in the books, had been used in

making the income tax returns and taxes had been paid on them, isn't that true? A. Only on part of them.

1382 Q. Well, now, what part was omitted from the cash receipts? A. Well, the cash receipts recorded on the books and posted or credited to Mr. DeLucia's personal account were not included or reflected in the income reported on his income tax returns.

1383 Q. And you gave us the nature of some of that. Some of that came in by way of loans to Mr. DeLucia, isn't that true? A. Where there were loans, yes, sir. Yes, sir.

Q. And you, as an expert, you know that if a man receives money as a loan from somebody, he doesn't need to pay Uncle Sam tax on that, does he, as income? A. No, sir, he does not.

Q. Will you agree with me that accountants—you have already told me different accountans have different ways of going at this business of keeping books.

Would you agree with me that accountants being expert as you are, might differ in opinion as to whether or not the books are adequate or not?

A. Well, adequacy for accounting could be an entirely different thing that adequacy for income tax purposes.

1384 Q. And adequacy from the standpoint of the taxpayer could be adequate from his standpoint and yet unsatisfactory to use as an investigation, isn't that true?

A. Well, unsatisfactory to me as an Internal Revenue agent, yes, sir, for the purposes for which I was looking at them.

Q. Yes, you were looking to see if you could find more income that possibly hadn't been paid on, isn't that right?

A. No, sir, I was interested in the source of any cash receipts on the books in order to determine whether it was income or was not income.

Q. When you looked at his return and you found he had listed certain income under the heading of miscellaneous, he paid tax on those items, didn't he, in so far as the returns reflected?

By Mr. Barnett: What returns are these? Is that '49 and '50?

By Mr. Stewart: Whatever returns were based on the books.

By The Witness: Are you referring to the 1948, '49 and '50 returns?

By Mr. Stewart:

1385 Q. Pick out any ones you like. A. I believe on those returns, on one or more of them, there were small amounts of miscellaneous, which the miscellaneous nature was identified on the books. I mean it was miscellaneous on the return, but when I traced it on the books, the books said what the source was.

Q. Now did you happen to be in court here when Mr. Klein, the revenue agent, testified? A. No, sir. Yesterday was my first day in court.

Q. Did you read Mr. Klein's testimony after it was written up? A. No, sir, I have not read any testimony.

Q. When you were investigating this case and familiarizing yourself with it, did you read Mr. Klein report to his superior as a revenue agent? A. Yes, sir, I read his revenue agent's report on the examination of Mr. DeLucia.

Q. Now, Mr. Klein testified here that he more or less specialized at one time in going around and auditing books and records kept by people who were in the business of gambling.

1386 You did have some people over there in your office who did make that speciality, didn't you?

A. I think there were, yes, sir.

Q. Did you ever do it? A. Yes, sir.

Q. Do you know what is meant by the term bankroll in that connection? A. Yes, sir. I recall it was used occasionally.

Q. It might be a slang phrase, but to you as an expert accountant, it might mean a method of keeping books where the person keeping the books just puts down the amount that he is using in his business, and then he determines from what goes out and what comes in during the year what he has left and how much he had made, isn't
1387 that right? A. Well, my knowledge of the use of the word "bank roll" was in connection with the investigation of bookkmaker's returns, horse racing bookmaker's returns.
1388 They would operate at a location where they would take in money for bets and pay out on winning bets, and on hand at that location they would keep an amount of cash with which to finance these activities, and that to my knowledge is what they referred to as their "bank roll."

By Mr. Stewart:

Q. You examined books in that manner as best you could in your duties as a Revenue agent, didn't you?

A. Yes, I examined the returns of the people in that business.

Q. Although you were not very well satisfied with that method of keeping books, you did check the return with what you could find, isn't that right? A. I would check the returns with whatever records they had, yes, sir.

Q. That is right, and merely because these records don't please you or suit you, there is nothing much you can do about it unless you recommend some action to your superiors, isn't that right? A. There is nothing I can
1389 do about past records, that is true, that have been made. I can recommend future action.

Q. Do you have a feeling against Mr. DeLucia? Do you have a feeling at all? A. None at all, sir, no, sir.

Q. When we were over there to your office we had a discussion, and that is here in the printed exhibit that you have identified, and that will probably be read to the jury later on.

But you are familiar in a general way with that conversation that took place between you and me and Mr. Bernstein, Mr. Smith, and Mr. Scholz, isn't that right? A. Yes, sir.

Q. Mr. DeLucia didn't say a word, did he? A. No, sir, I don't believe he did.

Q. Do you remember that I started out by reading a letter which your Service had sent to Mr. DeLucia?

I will have you look at it here.

1390 Q. I will hand you Exhibit No. 198, and I have in my hand just a reprint of it. It happens to be a different color cover. (reading)

1391 I have correctly read that letter, haven't I?

A. Yes, sir, you have correctly read this here, yes, sir.

1392 Q. Does it bring it back to your memory that that is the way we started out in that conference, by reading that letter? A. I believe so, yes, sir.

Q. Now see if I can sum up the substance of that conference because I want to ask you some questions about this, and I don't want to stop to read the whole matter here. It covers thirty printed pages.

You will remember that I made reference to the fact that Paul DeLucia had in 1950 testified under oath before the Kefauver Committee. You remember I made that reference, don't you? A. Well, I couldn't answer unless I read this to refresh myself because, well, it is thirty pages here, and I just don't recall the details on it.

By Mr. Stewart: Your Honor, this is rather important to us. Could we have it read now so the jury can hear it? Then I want to examine Mr. Stonesifer. He is a very careful witness, I can see that. He is not going to answer
1393 any questions unless he is sure it is in there.

By The Court: You mean you would like to read the whole document?

By Mr. Stewart: That is right. Is that all right with you?

By Mr. Barnett: No objection.

By The Court: There is no objection.

By Mr. Stewart: May we withdraw Mr. Stonesifer while we are doing this. Can we cooperate and each read part of it? Mr. Green, will you help?

By The Witness: Shall I stay here?

By Mr. Stewart: You may step down.

I will read the part that is attributed to me, your Honor, where it is "Mr. Stewart" and Mr. Green will read where Mr. Bernstein speaks, and Mr. Barnett will read where any Government person speaks, so he will have several parts in this drama.

By Mr. Barnett: They are not very long, though.

By Mr. Stewart: First comes the letter that I
1394 just read. I won't read that again. I assume that you heard me read it.

Before I read the letter, there appears this, on page 2:

Mr. Stewart: I would like to make a preliminary statement, if I may be permitted.—

Note: Exhibit No. 19 being a printed transcript of the conference referred to by the witness and held in the office of the Revenue Service on September 1, 1954 was read to the Court and jury, as follows:

Wednesday,
September 1, 1954,
2:00 P.M.

PRESENT:

T. N. SMITH, *Group Supervisor*,
RICHARD F. STONESIFER, *Special Agent*,
JOHN A. SCHOLZ, *Special Agent*.

EUGENE BERNSTEIN,
WM SCOTT STEWART
PAUL DELUCIA

REPORTER WILLIAM STATON,

1394 MR. STEWART: I would like to make a preliminary statement, if I may be permitted—

We have a letter sent by registered mail addressed to Mr. Paul DeLucia. I have no doubt it follows a form. If it is agreeable to you gentlemen I shall read it.

"Mr. Paul DeLucia
812 North Lathrop
River Forest, Illinois
Dear Mr. DeLucia:

"Investigation of your income tax liability for the years 1948, 1949, and 1950 is about to be concluded. It is the policy of this office prior to the completion of income tax investigations to afford the taxpayers involved an opportunity to incorporate in the record such explanations touching on the material matters as they deem advisable.

"Pursuant to that policy, therefore, you are informed that such an oppertunity is now available and it extends to you personally. The proceedings if any, will be recorded and counsel may be present.

"Accordingly, we have set aside Thursday, June 24, 1954, at 10:00 a.m. for this conference, 16th floor, 17 North Dearborn Street, Chicago, Illinois. If the time and/or date are not at your convenience, please advise Special Agent Richard F. Stonesifer, DEarborn

2-4500, extension 777, and other arrangements will be made. All replies should be addressed to the District Director of Internal Revenue, Post Office 1101, Chicago 90, Illinois, attention: Acting Chief, Intelligence Division. Your appearance in accordance with this letter is to be considered voluntary on your part.

Very truly yours,

E. J. Sauber, District
Director of Internal Revenue"

Now, from time to time, that date for the proposed conference has been changed. Mr. Bernstein has been in communication with some of you gentlemen. My practice, as you may know, has been largely limited to the defense of criminal cases. I claim no special knowledge of income tax matters and, as a matter of fact, I can save a lot of trouble by saying I knew very little about them. The
1395 fact that this matter has been assigned to you gentlemen in the Intelligence Division has a certain amount of significance. I am informed that there is some question whether or not this is going to go on further and be recommended for indictment. I have a general knowledge of the operation of the various Federal units. You gentlemen have a certain amount of authority and discretion. You make your decision, as I understand it, and then you pass along your recommendation to the higher-up people. One reason I had for reading the letter is to call attention to the fact that you say that this appearance is to be considered voluntary.

I am not going to argue the point, but in some ways it is not entirely voluntary. A person doesn't like to get in trouble with you if it can possibly be avoided.
1396 I am leading up to my situation in this case and that is this,—bluntly:—If there is to be a criminal trial, if there is to be an indictment, I would rather that you pro-

ceed further on what you have now. As you know, the Constitution provides that a person is not required to be a witness against himself. I have run into conflict with Mr. Bernstein several times as to what our advice should be to Mr. D'Lucia, concerning various requests made by the Government officials. Mr. Bernstein has had a great deal more experience in these tax matters than I. He has been talking with me from time to time. Mr. Stonesifer probably knows about our differences second-handed—that when there was a question of whether Mr. D'Lucia should turn his books and records over to you gentlemen, or to Mr. Stonesifer, I didn't think it was wise under the
1397 circumstances to do so voluntarily. But Mr. Bernstein knows more about the tax laws, he was of the opinion that it was the thing to do, so I said okay. I took his advice and joined Mr. Bernstein in his advice given Mr. D'Lucia to turn them over. So, as you know, Mr. D'Lucia gave you his books and records.

MR. BERNSTEIN: Mr. Stonesifer knows about that problem.

MR. STONESIFER: Yes, you told me about it.

MR. STEWART: That's preliminary to what I want to say to you now because now, you have the books and I don't think you are in such a good position to say that Mr. Bernstein hasn't endeavored to cooperate with you.

We have had what I hope is a little friendly difference between ourselves, because I have a little different viewpoint than does Mr. Bernstein. He is a tax specialist and I am not.

1398 I just look forward and I take the view I think you gentlemen would take if you were in my place. That is, I expect the worst and try to prepare for it. I know that it is within your power to obtain an indictment. The Grand Jury doesn't require the defense to be represented. The

Grand Jury takes it for granted that you gentlemen have worked up the case. They will have confidence enough in you gentlemen to return an indictment in a case such as this, if so requested by the representatives of the Government.

Now, a frank discussion and an opportunity to explain things is one thing. An invitation to come to your office and help you prepare your case against the Taxpayer, that's another thing. That is what I am afraid you are doing. I don't happen to know you personally and mean no reflection on you. I just take the position that I
1399 ought to proceed with a little caution. I believe I owe that to Mr. D'Lucia.

As I understand it, the general complaint of the Government, represented by you gentlemen and particularly by Mr. Stonesifer, is that its investigation shows that more money has been spent, over a period of years, than is shown to have been on hand, as a result of income
1400 upon which a tax has been paid. I believe you gentlemen call it a net worth bases. I am informed by Mr. Bernstein that you are endeavoring to prepare what has been termed a net worth case.

Now, if that is your basis, I think we are entitled to know a little more before we answer any questions.

Up to now, as far as I have been able to learn, this letter is the only thing you have furnished. That, as you know, just says an investigation of income tax liability for these years is about to be concluded. Now, with all due respect to your method of handling business, which may be all right in the ordinary run of cases, I think in a case such as this, we should be entitled to some information—in the way of a letter would be better than anything else I can think of—where you give us some notice of what it is
1401 that you think that we might be charged with, or which might require clearing up and we could come right to the root of the matter.

I have no way of knowing what you other gentlemen have done, but I do know, from what I hear, indirectly, that Mr. Stonesifer has given considerable attention to this matter and has made a rather intensive investigation. If I would be permitted to, I would like to ask him if he has allowed Mr. DeLucia credit for the $300,000.00, for instance, which Mr. DeLucia told the Kefauver Committee that Mr. DeLucia had on hand when Mr. DeLucia came out of the penitentiary.

Now, as I understand the case, without a great deal of knowledge of your tax laws and bookkeeping and so forth, if I understand it properly, if Mr. Stonesifer gives Mr. DeLucia credit for that $300,000.00, there is nothing left to any charge which might be made here.

1402 Now, if that be true, it is just a matter of veracity. I have no right to ask Mr. Stonesifer questions. I am not going to do so, but I am going to do this:—I am going to suggest that before you folks are in a position to ask us questions, I think you should give us a little more information about what it is you want to know.

Now, as to the details of those inquiries, Mr. Bernstein can handle them much better than I can. I hope you understand my position. Mine is that you are not going to start with the defendant, if you are going to prepare a criminal case against him. That's bluntly putting it to you and if you choose, you might send what I say here on to Washington.

My information is that these things are more or less engineered from Washington and that handicaps us. The ordinary taxpayer might proceed upon the basis that if he acts in good faith, if he can show good faith

1403 to the local representatives, that that will give him some credit and the local people might make a favorable recommendation. But if it goes the other way, if the orders in our case do come from Washington,—I am just

going by some speeches made by the Attorney General—for instance, I have seen in the newspapers that the Attorney General in a speech named certain people, including this particular man, Mr. DeLucia. The Attorney General stated that Mr. DeLucia is to be deported. That these people are to be prosecuted for income tax evasions. The Attorney General appears to have prejudged our cases. Right now, which is separate from you folks, there is pending the same sort of inquiry; that is, we received a subpoena and were required to go over to the Immigration Depart-
1404 ment. I tried to tell those Government Agents, as politely as possible, they had better go and investigate their case, and if they had a case, to bring it and to not try to start with us. That's our position.

1405 The reason I take a little while in explaining it to you is that ordinarily, in a civil suit, for instance, in a tax matter if you want some more money, the chances are you would be given an opportunity to show that we were invited in here and we came and then we didn't care to make explanations. That might be a suspicious circumstance ordinarily, but if you take everything into consideration, I submit respectfully to you that under the circumstances of this case it is not a suspicious circumstance. The position taken by Mr. D'Lucia here is based upon my advice. I think if Mr. Bernstein could control the situation entirely, I am quite certain that he would be of the opinion that it would be better to have Mr. D'Lucia sit down here now and explain anything you wanted explained.

1406 I am not sure that he would want to do that, but anyhow, even if he did, from my standpoint, I don't think that would be wise. My advice to Mr. DeLucia now is not to answer your questions.

If you want to put some kind of charge in writing, or in some way give us some notion of what it is we have to meet, or if you would like to write us a letter and say you

don't understand this or you don't see that, why then we will have a different problem. We shall meet that if and when the time comes. But for the present, I don't think we care to answer any of your questions.

MR. SMITH: Let me say this, Mr. Stewart: As you say, Mr. Bernstein is quite familiar with this department and I am sure that he knows me well enough to know that I wouldn't take advantage of your client for any
1407 purpose whatsoever. This is not the time or place for those particulars.

The time and place for those particulars is in the District Court, if and when you should get there.

I am not at liberty to furnish you with a letter of what is considered or would be considered a Bill of Particulars as to the items or charges or the nature of this particular case.

I will say this, that we are not attempting to start with your client; we are attempting to finish with your client.

We are attempting at this stage of the game to give your client an opportunity to make an explanation of these excessive expenditures, over and above his receipts at this point, so that we can make a determination merely as a fact-finding agency. We are not the prosecuting agency in this. We are merely a fact-finding agency and if
1408 our facts are such, after discussing the matters with your client, if he so desires to discuss it with us, if our findings are such that we see fit to recommend prosecution, or we see fit not to recommend prosecution, that will be based on what we find out from your client.

MR. STEWART: I am glad I put in my statement that part about it not being personal, because I am assuming you folks are just trying to do your job.

I am not going to be free with insinuations with people I just met for the first time today. I am assuming you are going at this like you would any tax case, but to me, it is not just another tax case.

I have been through these Congressional hearings, and if you will pardon me, I say that this case and other cases such as this, are linked up with politics. The various
1409 people above you, in your office, have testified that they distinguish between certain cases. They call them racketeer cases and they stamp them with an "R". In such cases, less evidence is required because they feel that they can go ahead on less evidence than that required against the ordinary taxpayer.

I will repeat what I said before to you: This is not a situation like in an ordinary case, where you proceed in your usual way, and then make your recommendation.

We have the feeling that the conclusion has already been decided against us by those above you gentlemen. I hope I am wrong, but that's my conclusion. I base it upon a great many things which you probably wouldn't be interested in now,—the details, but that's my position now and I think our request is a reasonable one,—not being a tax expert.

1410 I just say let us know what it is. I think you ought to tell us whether or not you credited this Taxpayer with that $300,000.00.

MR. SMITH: Well, Mr. Stewart, I appreciate you and I and Mr. Bernstein and Mr. DeLucia, and the whole crowd of us can't sit here and discuss this matter unless we inform you what we are discussing.

MR. STEWART: That's right.

MR. SMITH: I have to, during the course of this interview, put you on notice as to what we want and what we want explained.

Now, if that is done in the record here as we go along, it serves the same purpose as a memorandum or a letter to you setting forth what we are driving at here.

1411 MR. STEWART: Mr. Smith, I will answer as to your oral statement. I just said what I did in passing, about a letter; I was just trying to make a suggestion.

If you prefer to do it orally, that's all right.

I would like to know from you—not necessarily today—that's up to you—but I would like to know from you sometime, what it is that disturbs you, or what it is that your investigation shows, that might require some further explanation.

My attitude now is that we have cooperated as long as we are going to. We furnished you with the books and you have the sworn testimony of the Taxpayer when he was cross-examined before various legislative committees. We have to come to the end of the matter of submitting to questioning.

1412 MR. SMITH: Well, as I said before, Mr. Stewart, we couldn't intelligently sit down here and discuss this matter with Mr. DeLucia, unless we asked you and informed you as to what we wanted to discuss.

MR. STEWART: Yes. Well, go ahead, I am listening.

MR. BERNSTEIN: If Mr. Smith is going to give us some indication of what this is about, then we may not have to make any statement at all. That is the indication I am first trying to get.

Our big problem has been this:—It had been customary in every fraud case that I have handled, or assumed fraud case, that we have some criteria from the Department as to what the nature of the complaint is, to explain its source, to explain away the differences, if possible, to show where our conclusions differ, so we can explain it.

1413 In this case, we never received any letter; we never received any indication of what the purported income was, with this one exception given to me in an indirect way,

and that was the last time I was here before Mr. Gallagher, Mr. Stonesifer, Mr. Lundsford, and Mr. Lloyd, when I indicated I wanted a continuance. I specifically stated we knew not wherefore this conference was being held or what its purpose, as I said then, here was—we were in the dark—. Finally, it was thrown out to me, the matter probably is being based upon expenditures.

That was the first intimation we had of the nature of what your hearing might be.

Now, we ask—what expenditures, what amounts and what years?

Now, if we are not in a position to have those particular items, how can we possibly say, "Here is a place we can explain that away."

1414 If we take into consideration the Government, in making its assessment sometime, I believe in '45 or '46 —I forget the exact year—against Mr. DeLucia and others, based its determination of income, for the years involved, partially upon approximately $400,000.00, alleged to have been received by my client, Mr. DeLucia; if you take that $400,000.00—in addition to that, there was certain income that the Government likewise inferred that my client had received, but they did not believe it to be taxable, because of the *Wilcox* case decision; that is the case, you recall, where embezzled funds were held not to be taxable. Where that had its application, I don't know, so they may have stretched the point quite a bit.

There was considerable doubt as to the taxability of this $400,000.00, or any portion thereof, of this other
1415 sum. Specifically, I think they called it kick-back money.

That was never included in this particular allegation of income.

Now, I am just giving—saying as to that $400,000.00, plus whatever funds there were,—that would tend to lend

credence to what Mr. DeLucia said, that he had $300,000.00 when he came out of the penitentiary in '47.

So, if you take all expenditures, plus all the loans that are shown on those books and records,—we have a complete set of books and records from the day Mr. DeLucia came out of the penitentiary. I believe we started keeping complete records January 1, '48. We gave you all the other data for '47.

Our books and records indicate every source of income, every item of disbursement. They are in complete detail.

1416 Now, of course, where we have a complete set of books and records such as those submitted to you, under the law, and the statutes, before you can set up income from other sources, you must first establish the fact that our books and records are inadequate,—that we have not properly recorded income.

Now, you must bear in mind that DeLucia, from the time he came out of the penitentiary, until about March of this year, was under the jurisdiction of the United States Court; he was under parole. He could not seek employment without being given permission to accept that employment by the Parole officials. He had to make out a report thereof to the Parole officials and to his Parole Advisor in the Parole Department. These records and reports indicate that at no time did Mr. DeLucia have any source of income during that period other than divi-

1417 dends, interest, from the operation of the farm, and the sale of crops. They also indicate loans,—which are fully recorded upon those books and records.

The books and records kept by Mr. D'Lucia were maintained solely for the purpose of indicating income,—which is all the law requires, namely that we keep a set of books reflecting income for each taxable period. The law does not require that we set up our complete net worth; that is not required.

The income tax law provides that one must maintain a set of books and records sufficient to indicate the source of income in a particular calendar period or fiscal period, whatever basis we report on.

We have not been informed that those particular books and records are incorrect. We know they are not in-
1418 correct. I have sufficient confidence and belief that these books are accurate. The Parole Department certainly made adequate investigation after each and every monthly report was made by Mr. DeLucia to the Parole Department.

1419 Mr. Stonesifer has studied these Parole reports made by Mr. DeLucia and no doubt is very familiar with them.

As you understand, under the Parole System, the Taxpayer, that is, Mr. DeLucia, was required during the period he was on parole, to file a monthly report showing all sources of income. It didn't require him to report all sources of funds,—but all sources of income.

Mr. DeLucia was so careful in the maintenance of these books and records, in which he put all details, that even when he got a small refund check from the State of Illinois, on gasoline tax for operating his farm, that refund was reflected on the books; even patronage dividends from cooperative farm co-ops were reflected on these books; all dividends, or interest which he received, was fully reflected on the books; loans which he had received from other
1420 persons were reflected on the books,—persons or banks. Dates were shown.

Now, these books were turned over to the Kefauver Committee. Part of our records were never returned to us by the Kefauver Committee. I think I told you about that one time, Mr. Smith, when we tried to reconstruct part of our records. Because the Kefauver Committee, I suppose, had so many voluminous records,—when it turned back something, you got it back piece-meal.

We never got back any of our social security records. They were never returned to us.

I am merely giving this to you, that we do maintain a set of books and records. There is no use in my citing law here, because I realize this matter is in the hands of capable lawyers right now,—but where we do keep and maintain a set of books and records, it is your privilege to indicate that our books and records are inadequate, do not fully reflect our income, but to date you have not so indicated. If we had a source of funds before that, that certainly is not taxable income. The Government filed an answer to our petition in the Tax Court. It elected to assess a certain sum, notwithstanding it may have believed it had more coming, that there was more coming, it settled the claim for the purpose of compromising litigation,—without any admission on my client's part as to the amount of income, merely as to the tax on what was believed to be taxable income, the Government certainly can't turn around and now say it was more than that for the period in question. For tax assessment purposes the Government determined the income during that period, as I recall, to be $233,000. The original assessment, as I recall, was based thereon. The sum attributed by the Government to my client, as I recall, was close to $400,000, inclusive as I said, of other sums which it held not to be taxable. Exclusive of that, the taxpayer reported several hundred thousand dollars income for the period involved. Now, it seems to me where we have given that kind of background, it fortifies the taxpayer's statement, when the taxpayer says, "I had $300,000 when I came out." My client certainly has not expended $300,000 since that time.

So, we fail to see, based upon our books and records, we fail to see wherein the taxpayer—where there is any basis for the Government claiming that our records do not fully reflect the income for the period in question.

Our main complaint is this, and I think you, Mr. Smith, and I, have had some cases together, but in every case, the taxpayer was told, "This is the specific item, explain it; this is another specific item, explain it." We were never furnished with any particulars.

We are saying here that where you try to set up and establish an income, you should not be permitted to do so arbitrarily. The Supreme Court of the United States has granted certiorari in a number of cases, wherein it was claimed the Government erred in setting up income on
1424 a net worth and expenditure basis,—taking certain things for granted.

Therefore, we have given you a starting point. Here is $300,000 from this particular date on. We ask where have we defaulted from that point on? If we have expended something beyond that, then we are in a position to turn around and say, "You are right there" or "You are wrong; we can explain where you have miscalculated."

MR. SMITH: Mr. Bernstein, I think that you are familiar with precedure enough to know that in cases in this office, in the Intelligence Unit, the Taxpayer is not furnished with a breakdown or an analysis of the particular items pertaining to the allegation, until such time as criminal cases are disposed of.

1425 MR. BERNSTEIN: I have had a lot of cases here wherein such information has been furnished.

MR. SMITH: Not in writing.

MR. BERNSTEIN: No,—it was oral.

MR. SMITH: I think I said, sometime back, that I didn't believe we could discuss this thing intelligently unless we gave you some notice as to what we are talking about. I still hold to that same statement.

MR. BERNSTEIN: Okay.

MR. SMITH: That in order for us to intelligently discuss this subject, we all have to know what we are talking about.

MR. STEWART: We are listening.

1426 MR. SMITH: I don't want to be put in this position where you two gentlemen are testifying for this witness.

Now, I would like to have you concede this much. Let's swear the witness in and as we go along, we will tell you what we want and if you see fit not to have the witness answer, you so state.

I will advise the witness of his Constitutional rights; he doesn't have to answer one question in this office that you gentlemen advise him not to.

MR. BERNSTEIN: I will let Scott Stewart take over there.

MR. SMITH: I don't want to be in the position where you gentlemen bring this witness in and you are going to sit here and testify for him.

MR. STEWART: He is not bound by what we say
1427 here. That goes both ways. Mr. D'Lucia is not bound by what you gentlemen say here either. We are not testifying for him. We are trying to straighten matters out and arrive at some understanding in this conference.

MR. SMITH: I certainly think the proper procedure would be—

MR. STEWART (Interposing): I seen no harm in Mr. DeLucia being sworn by you.

MR. SMITH: And advised of his Constitutional rights.

MR. STEWART: He understands them pretty well.

MR. SMITH: And if there is any question or anything comes up that you gentlemen see fit that he should not
1428 answer, I am not going to press for it. I am not going to violate this man's Constitution rights. He goes under the same rules and regulations as you and I do,—as far as I am concerned.

1429 MR. STEWART: I am glad to hear you say that. Here is one of our problems. There are cases holding if one answers questions at all, he has no right to choose; I mean he waives his rights.

A person who is being questioned can't choose the things he is going to answer. Although you may have made that offer. Ordinarily, in court procedure, a man is not permitted to answer only such questions he might choose. If he gives an answer on a subject, he may be questioned further on that subject. I will say to you frankly now that because of the situation Mr. DeLucia finds himself in, with reference to other departments of the Government and various other matters which are going on,—in which you are not particularly concerned,—I doubt the advisability of talking here at all today. It would be pretty
1430 difficult to consult as we go along. Such procedure would not be satisfactory at all.

Allow me to suggest that in some way, you let Mr. Bernstein know what it is that is bothering you. You can do it in your usual practice and in any maner you may choose. I am not asking that you put it in writing. For the time being, I don't think Mr. DeLucia should become a witness here.

MR. BERNSTEIN: You understand, Mr. Smith, Mr. Stewart represents Mr. DeLucia in certain phases of this work, while I am on the taxation end. I am compelled to abide by his opinion in any other field. Mr. DeLucia has so requested.

I promised to bring Mr. DeLucia and Mr. Stewart in here,—which I have done. The old story is, you can lead the horse to the fountain but you can't make his drink.
1431 I brought them here. Scott Stewart handles the other end of it, I don't.

MR. SMITH: I have no intention whatsoever of trying to make Mr. DeLucia drink, as you put it, at this fountain, unless he is so advised to do so by his representatives, but I don't think we should be in a position where you fellows are testifying for him.

MR. BERNSTEIN: We are not; we can't testify. We are just saying what we believe. We are calling your attention to the facts, which facts are a matter of record. This $400,000 I spoke of is a matter of record; so is this $300,000 a matter of record.

MR. SMITH: Let's say this, Dick, if you have no objection, give him a short summary of what the case consists of,—and then we will carry on from there.

1432 MR. STONESIFER: Well—

MR. SMITH: I mean you don't expect us to go into thorough details.

MR. STEWART: We shall be glad to hear anything you gentlemen see fit to tell us about the results of your investigation.

MR. STONESIFER: I think that the investigation so far has indicated that Mr. DeLucia spent substantially more money than he received in income during the years '48, '49 and 1950.

I believe that we would like an explanation of where the excess expenditures during those years came from; that is, the source of the money from which they were made.

MR. STEWART: Are you giving him credit for the $300,000 he testified under oath that he had?

1433 MR. STONESIFER: Well, now, the $300,000 would be a matter that I would want to ask him questions about.

MR. SMITH: That $300,000 has not been considered to date and that's part of the purpose of this investigation, to clarify it.

MR. BERNSTEIN: Nor have any of the funds assessed against him. Have they been credited to him?

MR. SCHOLZ: Might I interject something?

I think that we were aware of these funds, this $300,000 and this other money you speak of, and that's what we are attempting to do, is determine whether or not that source of funds explains the funds that were expended during the period we are interested in.

MR. SMITH: Let's do this: If we start with a certain point back in 1939, when Mr. DeLucia's returns
1434 were examined and we add the $300,000, it is simple mathematics. You have before you copies of the parole statements filed with the Parole Board; you know how much income he showed?

MR. BERNSTEIN: That's in the books and records.

MR. SMITH: How much expenditures he made from the time he got out of the penitentiary?

MR. BERNSTEIN: From 1948 on, yes.

MR. SMITH: Not giving consideration to his uncorroborated statement of his having in possession $300,000,—before and when he came out of the penitentiary,—and not being mindful of the fact that the Government assessed him back in the early years, the late years, 1939 an additional assessment of, I think some $230,000, that was subsequently settled for $115,000, I say being mindful of that, but I don't know whether it has been considered as
1435 yet in the computation, in the years 1948, 1949 and 1950, Mr. DeLucia is short and he has expended a sizable sum in excess of what his income is.

MR. STEWART: Well, if I understand you, you are sort of leaving your mind open personally as to whether he told the truth about the $300,000.

MR. SMITH: I say Mr. DeLucia has testified under oath before the Kefauver Committee, which is an uncorroborated statement, as far as I am concerned. And I say that is one of the points we would like to clear up.

MR. STEWART: Suppose we take the position that we stand on that statement? He made it under oath. Why ask him to repeat it? That's our statement and we stand on our books and records. We stand on the returns as made.

If you don't choose to believe them, there is nothing we can do about that as of today. Why should we not be
1436 permitted to take that position?

MR. BERNSTEIN: It is fortified—

MR. STEWART: If you are not willing to believe him when he said he had $300,000, if he said that over again now 300,000 times, repetition would not add anything.

MR. STONESIFER: Let me say this: I have read that in reading the Kefauver Committee testimony.

MR. STEWART: Yes.

MR. STONESIFER: That's the only place that I have seen it.

MR. STEWART: Yes, and they asked questions to indicate—

MR. STONESIFER: Mr. DeLucia may or may not—I don't know—want to add to it.

1437 MR. BERNSTEIN: You are fortified in that because of this money—

MR. STONESIFER: I am not talking about money; I am talking about adding to the explanation.

MR. BERNSTEIN: Mr. Stonesifer, you will find out that the Government's original statement was, the original contention was,—that Mr. DeLucia actually received $384,000, not $233,000, after eliminating certain things here. The Government's original contention was—

MR. STONESIFER: I have read it.

MR. BERNSTEIN: I don't know if you know what I am saying.

MR. STONESIFER: Go ahead.

MR. BERNSTEIN: If you take that breakdown and show the division that's supposed to have been made,—the share that would have gone to certain participants, including Paul DeLucia, under that statement, was nigh unto $400,000, but it only saw fit to assess $233,000 of that,—because those in charge assumed that amount
1438 was all the Government could tax.

More especially, as I tried to point out,—when a man says, "I had $300,000 at a certain time," if he doesn't show a possible source of income from which that came, you may choose to say, "I don't believe it." But you must have reasonable ground for your disbelief.

You should not overlook the basis on which this testimony,—given by Mr. DeLucia before the Kefauver Committee is fortified by circumstances in the record. You don't show he spent all that money during that period. You should realize that there must be some credibility to his testimony on this matter.

You have the case that was just decided out in Los Angeles,—where the court said it was impossible to say that the Taxpayer didn't have a certain sum,—when the proof showed that he did have it.

1439 MR. SMITH: The proof isn't that he had it. He came in, in 1939, to this Department and testified that he had on hand, at the end of 1939, some measly amount of cash. I don't know what the exact figure was. Take that particular amount of cash and add to that his receipts from that point forward, and that amount of cash was after this alleged extortion—

MR. BERNSTEIN: (Interposing) You say he came into this Department and testified to that? And you say you have a copy of this testimony here? Is that true?

1440 MR. SMITH: He testified before—he was examined by revenue agents and he presented books and records during that examination showing his receipts and disbursements and his cash on hand at the beginning of the period and the cash on hand at the end of it.

MR. BERNSTEIN: It is the same as I have now. In other words, suppose he had a source of income where we say we have $300,000 on hand, that wouldn't reflect any change; that wouldn't be shown on that sort of statement. The only place—I am assuming DeLucia had furnished a statement wherein he indicated variations between certain funds. If he had a steady fund which was not touched, that would not be reflected on the statement or his books. I don't think any statement you have indicates that he said any particular amount was all the funds he had on hand at any given period. Knowing Mr. DeLucia, I

1441 know he never says such things. He doesn't talk that way. He didn't talk that way to Scott Stewart or to me.

MR. SMITH: I think we have gone pretty far now as to what we are driving at here.

MR. BERNSTEIN: General;—it is still a general thing. The statement is,—he has spent more money than—can you show that he has received any money other than the fact of disbursements? I am certain that you can't. Let's be honest about that. The man has not worked.

Mr. SMITH: Well, Gene—

MR. BERNSTEIN: And you know he hasn't worked.

MR. SMITH: You know those cases on source are now pending before the Supreme Court. We don't know what the Supreme Court is going to rule.

MR. BERNSTEIN: Scott Stewart and I never try to guess what they are going to do.

1442 MR. STEWART: May I make this statement to you? I inquired before I came over here if you gentlemen were lawyers. I was told that you are not. I don't seek to argue law with you. However, I would like to leave this thought with you. When you have the sworn testimony of Mr. DeLucia that he had $300,000, you may decide among yourselves, to conclude that you don't believe Mr. DeLucia, concerning such testimony, but you have no right to substitute something else.

In other words, you are left with no proof at all as to the amount. You have to take his word for that $300,000 or just disregard it. I do not believe any court will permit you to disregard it and then guess that he had nothing or some smaller sum. You are required to have proof. Please bear in mind that the burden is on you, as I understand it. If you are going to go after this man, either

1443 civilly or criminally, you must have the proof. You see my position: I am informed, that you don't have sufficient proof to proceed further. You should not expect us to furnish you with the evidence you have so far been unable to secure. I have been listening to Mr. Bernstein—

MR. SMITH: I don't know; maybe you are misinformed.

MR. STONESIFER: I don't think you quite understood what I tried to convey on the $300,000.

MR. STEWART: All right, I shall listen.

MR. STONESIFER: Let's say that we have not arrived at a conclusion as to whether or not Mr. DeLucia told the truth about that amount. We have not concluded that he did not tell the truth. Before arriving at a conclusion, we would like to ask him additional questions about it to see if he wishes to add anything to the statement.

1444 MR. STEWART: Well, you have my statement that he stands on the testimony given by him before the Kefauver Committee.

MR. STONESIFER: I want to bring out we have not concluded that he didn't tell the truth.

MR. STEWART: I see. Well, I don't think he can help himself or you gentlemen by telling you about the $300,000 all over again. I mean to say that that is my position. Probably this could have been made clear in much less time.

MR. SMITH: Well, my—I think that possibly the calculation Mr. Bernstein has made, being an expert accountant, his own calculation would show that during this period, Mr. DeLucia couldn't have ended up with $300,000 unless there are some factors in here that I don't know about.

MR. BERNSTEIN: I think it would.

MR. SMITH: That is all we are trying to find out.

1445 MR. BERNSTEIN: I think it definitely would, if you analyzed your statement and add to that the reported source of income and deduct the claimed expenditure, you will find that he should have had more than $300,000 left; he should have had far in excess of that.

I will give you a typical example of possible errors in your determination. In one Parole report, I indicated a fee paid twice. This was a $1,500 error. When you make up these reports, you work under pressure. I caught myself on a $1,500 error, that I showed $1,500 paid in excess of what he actually paid. I subsequently corrected this. Possibly you indicate this excess disbursement.

It is that kind of thing we want to prevent, but there was extreme care taken. Every purchase of the small-

1446 est bit of hardware, not only the source of the purchase but the date and the amount was shown, because we knew how the Department was after this man. We knew how accurate he had to be.

I will just repeat what I said before. Mr. Stewart made this observation;—he didn't repeat it here. He assumed that this particular letter, emanating from your Department a day or two after another proceeding was instituted before the Immigration Department, was indicative of your two departments were working hand in hand, that you were cooperating, and both of your departments were out to harass this man. That was Scott Stewart's original point of view.

MR. SMITH: I think that's an erroneous conclusion.

MR. BERNSTEIN: I don't join in that. I told that to Mr. Stonesifer at the last hearing.

1447 MR. SMITH: I don't think we have any intentions of harassing this Taxpayer any more than we have intentions of harassing any taxpayer at this level of the game. Gene, all we want are the facts. If the Taxpayer isn't going to testify—

MR. BERNSTEIN: That is up to Scott Stewart. I have my ideas.

MR. SMITH: We have gone pretty far in disclosing to you the nature of the charges. The man comes in on a certain date with books and records that indicate he has a certain amount of money on hand. From that point forward, computation, taking into consideration and crediting all loans, all sources of income, with the exception of this alleged $300,000 that he testifies to, would indicate that he was short—

1448 MR. BERNSTEIN: Tom, if you examine his books and records it will be observed they do not reflect any of his other capital assets, because they were non-income producing and any expenses attributable to them were not deducted.

For example, I didn't pick up on his books his home in River Forest. I didn't pick up his other pieces of property. They were non-income producing.

Neither did I pick up any other assets on hand because they were non-income factors. Therefore, as I pointed out, the books that were opened in '48 only reflected property against which revenue items could be charged. For example, that farm, that had to be picked up and in detail so we could set up a proper depreciation schedule and eliminate from it items which were not deductible, such as on the home, and no depreciation was taken on that.

1449 Any place where we had a revenue item which related to it, that capital item was picked up; otherwise, it was not.

I say, therefore, these books and records don't indicate all of the Taxpayer's assets. It was never so intended. I so testified, as you may recall, to the same effect before the Congressional Committees, that it wasn't picked up.

MR. SMITH: The books and records I have reference to are the books and records Mr. DeLucia presented back in the 30's, the late 30's, when he was examined by a revenue agent, which indicated that at the end of a certain year, he had a certain amount of cash on hand, and from that point forward, it is a mathematical calculation. Taking into consideration his testimony of this $300,000, and I say bearing in mind the additional assessment which may or may not have been considered in his figure of

1450 cash on hand as of a certain date, that the man is short in the years '48, '49, and 1950. It is strictly mathematics, Gene. There is no mystery. I am not trying to attempt to put any mystery in this case. It is strictly a case of mathematics.

MR. BERNSTEIN: Let's carry that out further then. The Department, in determining his assessment and in reducing his assessment, gave him credit for income allegedly reported from certain sources. Therefore, his income was far less than other participants' share of the profit, so it is obvious that that money was not picked up.

What I am stating is,—this taxpayer reported, we will say, for example—I will use round figures—if he had reported $10,000 miscellaneous income and he had picked up an allegedly $40,000 from another source, they would credit him with that and only tax him on $30,000. The
1451 $30,000 assessment was far less than another participant's in this fund. That fund certainly was not picked up, because you will find that the sums he reported will be in line with his capital assets and capital disbursements, up to that date. It doesn't take into consideration this source of $233,000, which I say was around $400,000, based upon the original report and other data.

I mean if you look at those particular factors in the report, you will see there must have been a large sum of money which Mr. DeLucia had on hand, at the time of the Kefauver hearing.

I am trying to indicate to you the fallacy of your attempt at rationalization in this matter.

Mr. DeLucia is not a bookkeeper. He is a man who has had not very much schooling, who understands you at times,—at times, he doesn't. You may comprehend him and at times you may not. I know I had difficulty for a
1452 long time understanding him at all. You will find when you elicit certain information, he thinks you might be speaking of one thing when in fact you are speaking of another. I think if he had $100 here and $100 here, at the opening and closing period, he wouldn't pick up that sort of item, because there was no change in factual information. It was the same thing, and because there was no change he believed it did not affect his income. Therefore, you can see the basis for his conclusion on it. Any income he believed taxable, was reported in his own clumsy way, when he prepared his returns.

1453 MR. STEWART: May I make a suggestion? I think we did make a little progress. We met you and you know what our position is.

Mr. Bernstein knows much more about the figures than I can understand. I am certain Mr. DeLucia can't understand half of what Mr. Bernstein has said here. If it is a matter of trying to get together on the bookkeeping, why can't you gentlemen do that without Mr. DeLucia or me? I make that suggestion—

MR. SMITH: (Interposing) I think it is more than a matter of getting together on the bookkeeping. It is a matter of the witness attempting to clarify conflicting statements as to his income.

MR. STEWART: Well, in the present state of the record, we wish to stand on what has been said, on the
1454 statements as such have been made in the returns and things like that. I mean that's our position now.

Going back to your letter, it says our appearance is to be considered voluntary on our part, so I take it that our exit may be voluntary, too?

MR. BERNSTEIN: I don't know of anything else we might add at this time.

MR. STEWART: May we go?

MR. SMITH: Sure, sure.

MR. STEWART: All right.

1456 Tuesday, May 20, 1958, 2 P.M.

1457 By The Court: All right. Mr. Parnett, and gentlemen: I have read all of the documents rather thoroughly in re witness Thomas N. Smith, which were discussed briefly and superficially with lawyers in my chambers.

I find that none of these documents, with the exception of the last one, can possibly have any bearing on the witness's testimony, or have any probative value of any kind, particularly in this situation, so, I am going to identify these according to the regular procedure and have them

marked. The Government is authorized not to dispose of them, whatever the order is, but, on the last one, that document, I would prefer that Mr. Stewart take a look at it and if he wants it, I would order the Government to let him look at it, because it has a bearing on his 1458 witness.

By Mr. Stewart: I want it. I want anything I can get.

By The Court: Yes. I say, perhaps you don't. I don't know what the value is.

By Mr. Stewart: If I get it and if I don't want to use it, that is another matter.

By The Court: That will be the order.

By Mr. Barnett: Your Honor understands my position with relation to this. It is not contemporaneous with the event he testified to.

By The Court: It is not what?

By Mr. Barnett: It was not made contemporaneously with the events he testified to from the witness stand. It was made some two years later, maybe even longer than that, later. It is the subject of the impression of Mr. Smith.

By The Court: Let me read it again, if I may. It is a short document.

I don't care about the contemporaneous part of it. 1459 If it has any value, I think the purpose of the law is that they ought to have it. If it has anything that would shed light on his testimony—and, as I understand it and as I recall it, and if I do not recall it correctly, you remind me—he testified to such a conversation.

By Mr. Barnett: That is right, your Honor.

By The Court: (Continuing)—with the defendant about a $25,000.00 contribution to a general fund.

1460 By Mr. Barnett: That is right, your Honor. And this document, written some three years later, is his impression as to the meaning of that conversation, which, I don't feel is at all under the Jencks law, Section 3500 of the Criminal Code.

By The Court: Well, I am going to order it is his reaction to his own conversation with the defendant and I think under all of the citations, the defense ought to have the benefit of it so they can cross question him.

By Mr. Stewart: That is, the entire number of things that Mr. Barnett identified in your chambers? Are we to have all of them?

By The Court: Can you have what?

By Mr. Stewart: Can we have all of the documents that Mr. Barnett identified in your chambers?

By The Court: No; just the last letter. The others 1461 cannot have any possible bearing and are strictly speculative, office communications, not about this matter but about every phase of the case and have no bearing on the situation.

By Mr. Stewart: May I say this, Judge, with all due respect, I believe your Honor is making a mistake in deciding whether they are of any value to us and I wanted the record to show that.

Then, in order to preserve our record, I will ask your Honor to seal up those that you have refused to give us.

By The Court: That is exactly what I intimated to Mr. Barnett at the outset.

By Mr. Stewart: That can be done later, if necessary.

By The Court: I said I would like to preserve your record for you and all the others, too, to the Court's absolute satisfaction that it may be reviewed.

On the other, I am going to order that it be given to you.

By Mr. Barnett: Your Honor, now then, if you 1462 will give me back that folder in which you have those

documents, I will extract the one which you are permitting the defendants to have, give it to them, and put the others back in the folder, have it sealed and marked.

By The Court: I will appreciate it very much.

Mark that folder—

By Mr. Stewart: Court's Exhibit 1.

By The Court: Have that folder marked, with its documents, "Documents have been reviewed by Judge Miner, the trial Judge, and have been denied to the defendant."

By Mr. Barnett: Very well, your Honor.

By The Court: Or "defendants."

1463 By Mr. Stewart: Right in that connection, I think it might be well for me to say, for the purpose of the record, that our position should be just a little bit stronger now since more testimony has developed. I mean, it is stronger than it was when we were in chambers because there is still an additional reason why we should have that report.

The playlet that we put on here this morning with reference to what happened up in the conference where Mr. Smith was present and Mr. Stonesifer and Mr. Scholz representing the Government, your Honor could see from that that we were told that the purpose of calling us in was so that they could complete their investigation and make their report.

So, the Government having alleged that as an overt act, it follows logically, it seems to me, that the report that was made is something that would be germane to that examination.

1464 By the Court: I think I will go as far as to say to you that almost all of the documents, I think all of the documents and particularly the long, long, long letter, were not the result of any investigation by any one agent nor do they apply to any particular act.

It is a discussion of the entire matter among themselves, a result of his discussions with different agents and their respective conclusions, which is all speculative.

It isn't subject to cross examination, hasn't any probative value, and I couldn't admit it if you had it before me.

1465 By Mr. Stewart: May I say this, Judge, that we are informed, and we gather from the witness' testimony in this court, that the purpose of having us come into that office was a regular step that is taken in cases which have been assigned to the Intelligence Division, and those gentlemen were required to make a decision.

They had to decide whether to recommend criminal prosecution or to close the case out and turn it back to the people who are just trying to get the money, the regular agents.

Now if I am correctly informed, Mr. Smith recommended that the matter be not criminally prosecuted. If that report was made, it is vital to the case, especially in view of the fact that Mr. Bulger here is indicted as being a conspirator who went up there and told them something false in order to influence their action.

If we can show by their report and the surrounding 1466 circumstances that there was no chance to influence the action because the action was based upon what they investigated and what they found,—you see, there are a great deal many more things involved here than just a question of trying to impeach a witness. We are trying to get at the facts.

Now if it is a fact that this case was closed out and recommended not for prosecution, that is a fact which I think we are entitled to, and we shouldn't be left just fishing for it.

I could ask Mr. Stonesifer, but supposing he tells me there was no decision made then I am hopelessly at his mercy. I should have what is in the file.

By Mr. Barnett: May I be heard, your Honor?

By the Court: Surely.

By Mr. Barnett: In the first place, your Honor, of course, as your Honor knows from reading the re-
1467 view memorandum, the fact is not as Mr. Stewart is apparently informed on it.

Whether or not the case was closed or not closed at any stage in the proceeding, to my mind has absolutely no relevancy in connection with the case that is here on trial.

We are trying a case which was indicted—

1468 By the Court: I didn't want to say that because that might intimate that it was or was not in the files. I didn't want to comment on it, but I agree with you that even if one agent should or did comment or express an opinion that it should or should not be prosecuted criminally, it wouldn't in the least affect this situation nor would it be admissible before the jury.

By Mr. Barnett: That is our position, your Honor.

By the Court: I would exclude it.

By Mr. Stewart: Then I think your Honor has committed error, with all due respect. I think you have helped us with our record now.

By the Court: That is all right.

By Mr. Stewart: Thank you.

By Mr. Barnett: For the record, I have turned over to Mr. Stewart the memorandum of Thomas N. Smith to special agent Mahon, dated March 13, 1957, and I would like to have that marked as an exhibit, if I may.

1469 By Mr. Stewart: You are not going to put that in evidence?

By Mr. Barnett: No, but for identification.

I will ask the Reporter to mark this as Government's Exhibit 199 for identification.

(Thereupon said document was marked Government's Exhibit 199 for identification.)

By Mr. Barnett: For the record, your Honor, I am handing Mr. Stewart Government's Exhibit 199.

By Mr. Stewart: For identification.

By Mr. Barnett: Yes.

By the Official Court Reporter: How do you want the rest of the file marked that you are excluding?

Note: Exhibit 199 is as follows:

March 13, 1957

MEMORANDUM

To: Special Agent Paul G. Mahon

From: Thomas N. Smith,
Supervisor

Re: SI 45658FR
Paul De Lucia

Reference is made to my memorandum dated February 28, 1956 in re an interview had with the above-named taxpayer on February 2, 1956 at Miami Beach, Florida. In order to clarify Paragraph 4 of this Memorandum the following is submitted.

With reference to Paragraph 3 of my Memorandum wherein DeLucia stated that he had given some $15,000 in cash to Mrs. Charlotte Campagna, it was my understanding in 1956 that DeLucia was referring to money given to Mrs. Campagna for use in the extortion trial which took place in 1943.

With reference to Paragraph 4 wherein I report that DeLucia stated that the matter relating to the parole violation was handled out of funds given to Mrs. Campagna, that these funds referred to subsequent monies paid over to Mrs. Campagna during the year 1947 or subsequent thereto, and in no way were connected with the $25,000 given to her in 1943.

I might also say from my knowledge and recollection of the extortion investigation and trial which took place during 1943 that I believe that Paul DeLucia certainly spent a good deal in excess of the alleged $25,000 which he asserted to me on February 28, 1956.

Thomas N. Smith

By The Official Court Reporter: How do you want the rest of the file marked that you are excluding?

By the Court: I don't want it marked. I just want Mr. Barnett—

By Mr. Barnett: We have extracted the material that you have ordered us to give to them. That is Government's Exhibit 109.

1470 By the Court: The rest of it may be sealed in an envelope and marked "Documents withheld from the defendants by ruling of Judge Julius H. Miner" and dated today.

By Mr. Barnett: Will you keep it now, your Honor?

By the Court: No, I think I ought to seal it and you keep it because I have no file for these matters.

By Mr. Barnett: All right. We will keep it until the end of the trial, and then turn it over. We will take care of it.

By the Court: I will seal it and give it to you.

Bring out the jury, please.

I might qualify, Mr. Stewart—

By Mr. Barnett: The jury is coming out, your Honor.

By the Court: I will take that up at the next recess.

1472 *Redirect Examination*

By Mr. Barnett:

Q. Mr. Stonesifer, Mr. Stewart inquired of you about miscellaneous income on the returns for 1948, '49 and '50. You said that was miscellaneous income that was shown on the return and was reflected in the books.

Do you recall that?

A. It was explained as to the nature in the books, I believe.

Q. What was the nature of that miscellaneous income that was explained on the books?

A. As I recall, there was some dividends on stock and some, what is called, "Patronage dividends," which are sort of a refund they get from a farmer's cooperative association for buying all their products there, like a year end dividend for dealing with them.

There may have been some other small, I say small, $100, or less, amounts from sale of deceased animals or something like that—not sale of deceased, I mean sale of sick animals for destruction.

1473 Q. What were the approximate amounts of miscellaneous income reflected on the 1948, '49 and '50 returns?

A. Well, as I recall, it would be substantially under $1,000.

Q. On each return?

A. Yes, sir.

Q. There was a reference to you having the books in that tableau that we put on where we went through the conference on September 1, 1954. There was a statement made in there that you had the books.

Did you have the books on that occasion?

A. No, sir. The only time I ever saw the books was in Mr. Bernstein's office, the four or five successive days that Special Agent Currant and I worked on them.

That is the 1948, '49 and '50 books.

Q. That was in January of 1953? A. 1953, yes.

Q. Is it true, Mr. Stonesifer, that at no time during the course of your investigation were you given canceled checks or other supporting documents for these books?

1474 A. At no time, no, sir.

I should say not at any time was I given any.

Q. Mr. Bernstein also explained to you where he got the information which he placed on those books, did he not?

A. Yes, sir, he told me the source.

Q. That was at the time you were in there in January, 1953? A. Yes, sir.

Q. He told you where he got the information?

A. I asked him and he told me where it came from.

Q. That information came from what source?

A. It came from check stubs, bank books—

Q. No, from whom did Mr. Bernstein get the information? A. Oh, Mr. DeLucia.

1475 Q. Do you know whose handwriting these books were kept in? A. Mr. Bernstein's.

Q. And could those books, without checks and invoices, be complete? A. No, sir, they couldn't, in my opinion.

By Mr. Barnett: I have no further redirect examination, your Honor.

By Mr. Stewart: We will offer the books in evidence, being Exhibits A and B, your Honor.

By Mr. Barnett: Your Honor, I have no objection to the books going in but this is my case. I suppose the offer should come in their case.

By the Court: He can offer it, if there is no objection as to the procedure, and it may be received.

By Mr. Barnett: I have no objection. Shall we mark them as Government's Exhibits—

By the Court: No. They are not yours. He is offering them. It is a matter of procedure and that is all it

1476 is. Do you want to mark those as Defendants' Exhibits 1 and 2?

By Mr. Stewart: A and B. They are marked A-1 and A 2, your Honor. We will take the same numbers we have had on them.

(Said documents, so offered and received in evidence were marked Defendants' Exhibits A-1 and A-2.)

1483 Note: Mr. Barnett read from Government Exhibit No. 200 being a Traverse signed by Paul De Lucia in case No. 48 C 867 entitled United States *ex rel.* Paul De Lucia *vs.* Thomas O'Donovan, Marshall.

1482 • • •

Mr. Barnett (reading):

1482 Now, skip to page 8 of the printed copy:

"The Congressmen neglect to report the following 1483 from the interview of your petitioner by the Chairman of the Parole Board (p. 480):

"'Judge Wilson: What part if any did you have, why did they get you involved in this thing?'

"'Paul DeLucia: A. Well, that's a long story, Judge, but the part I had in this thing was very small and Bioff and Browne made it a big one, but I never had much to do with them outside of being friendly and to get some jobs from them. Browne testified that he gave me money, which was absolutely not true: Bioff, the only thing he did was put $100 for my kids in the bank when they was born.'"

I now skip to page 24 and 25. This is a part of the body of the traverse.

"The Congressional Committee on Expenditures in the Executive Department in its printed report states (p. 12) that your petitioner was charged with evasion of income taxes. It is stated in condemnation of the 1484 Parole Board (p. 17) that no claim was ever made that any of the parolees had ever made an attempt to reimburse those they had defrauded. The report neglects to say that the tax claim was settled in a proceeding approved by the Government officials and in the Tax Court. The settlement was approved by

Congress. No mention is made of the denial by your petitioner that he ever received this money. No mention of the circumstance that if the Government had been compelled to go to trial in the Tax Court, that the testimony of Bioff and Browne is all the Government would be able to produce. The fact that Bioff and Browne may not have been available as witnesses in the tax case, because of their dissatisfaction with their treatment by the Government, was not developed, nor was the fact that events subsequent to the criminal trial would have destroyed the credibility of Bioff and
1485 Browne. Some of the Congressmen persisted in regarding the verdict in the criminal case as evidence that your petitioner had received this money from Bioff and Browne, even after it was explained to them in the hearings that the conviction was for conspiracy and that consequently the jury did not have to believe that money was paid to your petitioner by Browne and Bioff."

1486 Now, skip to page 35:

"Browne and Bioff were prosecuted and convicted of the substantive offense, prohibited by the Anti-Racketeering Act and sentenced to eight years in the penitentiary and to pay a fine of $20,000. The fine was paid to avoid a more severe sentence. After their conviction, they appeared in the trial as witnesses for the prosecution. They furnished evidence of circumstances from which the Government succeeded in convincing the trial judge and the jury that your petitioner was guilty of the conspiracy charged. It cannot be disputed that Bioff and Browne obtained large sums of money from companies alleged to have been the victims. Your petitioner states that your petitioner had nothing to do with the obtaining of this money nor did your petitioner receive any of it.

"Your petitioner is not guilty of the charge made and by reason of some of the facts developed by the
1487 legislative committee, including facts which your petitioner was unable to prove prior to the hearing, your petitioner states that his conviction rests upon perjured testimony."

Now, skip to page 37 and 38:

"The prosecutor claimed that the evidence showed control of the IATSE. He was compelled to make such claim, the indictment so charges, and this is one of the keystones to his case.

"Your petitioner had no interest in the union and was not concerned with its objects. No one claimed to have any proof to the contrary of this statement. Your petitioner did not belong to the union or any union nor did your petitioner hold any union position. The prosecutor secured conviction of your petitioner by assuming from scattered conversations over a period of years, mainly, with persons dead, that the conspiracy existed. Then it became merely a matter of identifying the conspirators."

1488 Now, turn to page 39 and 40—pardon me. I continue at page 38:

"The threats made by Bioff were his own and were backed up by the power of the union. Bioff never mentioned your petitioner to his victims. The victims had no dealings or no knowledge of your petitioner during their troubles with Bioff and Browne. Bioff never claimed to have delivered money with any explanation of the manner in which he obtained it. Bioff did not testify to any detail or circumstance in corroboration of his claim about the money. There was no corroborative evidence that Bioff had made hundreds of thousands of dollars as he claimed. No bank

account, no deposit box records, no proof of the expenditure or possession of any money by Bioff and Browne. The victims dealt only with Bioff and Browne."

1489 Page 39:

"The anti-racketeering Act excepts from its provision the action of union officials in carrying out the legitimate objects of labor. Bioff and Browne obtained the money by reason of their union position upon threats of strikes. Your petitioner had no part in the strike or the demand for money and no one claimed that your petitioner took any such part.

"Wherefore your petitioner prays that he be discharged."

Signed in pen and ink on the original document "Paul DeLucia."

"State of Illinois)
) ss.
County of Cook)

"Paul DeLucia being sworn states that the above traverse signed by him is true."

Again signed "Paul DeLucia."

"Subscribed and sworn to before me this 7th day of July, 1948, Emmet J. Eary, Notary Public."

1490 That may be Cleary.

The petitioner on this document is Paul DeLucia.

By the Court: Are you through with that document?

By Mr. Stewart: Are you through? I have an objection, your Honor.

By the Court: Yes.

By Mr. Stewart: I didn't know the purpose and now I heard the excerpts read and I gather the purpose is, as the jury and your Honor will gather, that Mr. Barnett is endeavoring to show, by a statement made by Mr

DeLucia in some other litigation, that he may not have gotten some money we have been referring to here as extortion money.

Now, my point is that the Government took a contrary position, as shown by the testimony of Mr. Ruggaber, and they claimed we got $404,000.00. They collected $190,000.00 worth of taxes and interest and they shouldn't be allowed

1491 by your Honor to blow hot and cold, to take one position at one time and to take another position at another time.

By the Court: That constitutes an argument to the jury and does not go to the admissibility. That will be the ruling.

1491 CLARE HOFFMAN testified:

Direct Examination

By Mr. Barnett:

Q. Where is your residence, sir? A. Alligon, Michigan.

Q. What is your occupation? A. Well, at present I am a representative of the Fourth Congressional District, Michigan.

Q. United States Congressman? A. Yes, sir.

1492 Q. How long have you been a United States Congressman? A. Since January, 1935.

Q. During 1947 and 1948, were you Chairman of the House Committee on Expenditures in the Executive Department of the Federal Government? A. I was, sir.

1493 Q. And were you also, at that time, a chairman of the sub-committee, investigating the granting of paroles? A. Yes, sir.

Q. Had your sub-committee conducted hearings on this matter in Chicago, Illinois, during September of 1947?

A. It did.

Q. Where did those hearings take place? A. In this building.

Q. During the course of these hearings, did your sub-committee call Paul DeLucia to testify? A. He was called.

Q. And was he put under oath? A. He was.

Q. Did you personally question him? A. I did.

Q. By what name was he called at that time? A. Paul DeLucia.

Q. Any other name? A. Ricca.

Q. In the course of your interrogation, Mr. Hoffman, was anything said about the 1946 settlement of the
1494 DeLucia tax liability? A. There was.

Q. What was said? A. Several things. He said he didn't owe the money and he also said he didn't have any money to pay it.

1495 Q. Was there any conversation about extortion money? A. There was.

Q. What was that conversation? A. He said he didn't get any part of it.

Q. Was there any conversation about union funds?

A. He said he didn't get any. Of course, my answers are the substance of it, not the words.

Q. Were there any questions and answers concerning Willie Bioff? A. There were.

Q. What was said about that? A. He said that Bioff was a liar and a skunk, and several other names.

Q. With reference to money received from Bioff?

A. DeLucia said he didn't get any of it.

Q. Was anything said about the conviction of Paul DeLucia in the extortion trial in New York? A. He said he was innocent.

Q. I hand you what has been marked Government Exhibit No. 201, and ask you if that is the official
1496 printed record of the hearings conducted by your sub-committee? A. It is.

* * *

Cross Examination by Mr. Stewart.

Q. There is a provision of the federal law or procedure that when you as a congressman subpoena a federal official, unless he obtains the consent of his superior, he can come in and inform you that he is not going to testify? There is such a regulation or statute? A. There is.

Q. That was invoked during your hearing, wasn't it?

A. It was.

1500 *Testimony of Joseph B. King.*

JOSEPH B. KING, testified as follows:

Direct Examination

By Mr. Barnett:

1501 Q. What is your occupation? A. I am assistant regional counsel for the chief counsel's office of the Internal Revenue Service located in Chicago.

Q. How long have you been in that position? A. Approximately six years.

Q. Prior to that, what was your occupation? A. I was an attorney with the chief counsel's office for six years also.

Q. What are your duties in your position? A. I am in charge of the evaluation and disposition of criminal tax cases referred to the regional counsel's office by the Intelligence Division, which is the fraud investigation agency of the Internal Revenue Service.

Q. In 1954, was an income tax case of Paul DeLucia for the years 1948, 1949 and 1950 referred to your office?

1502 A. Yes, it was.

Q. Approximately when was that in 1954? A. That was in October of 1954.

Q. After receiving the case in your office, what did you do? A. The first thing I did was to request of the power of attorney section of the District Director's office concerning whether a power of attorney had been filed in

the name of Paul DeLucia and I received the information that one had been filed.

Q. Did you receive that in written form? A. Yes, I did.

Q. Was that document made a part of your file? A. Yes, it was

1503 Q. Mr. King, I am handing you a series of documents which bear exhibit numbers, the first one being Government Exhibit No. 190, and ask you if that is the document to which you have just referred. A. Yes, it is.

Q. What next occurred after that? A. I received this document back from the Power of Attorney Section, indicating that Mr. Eugene Bernstein had been named in a Power of Attorney filed by Mr. DeLucia in the District Director's office as Mr. DeLucia's attorney.

I subsequently, within a week, wrote a letter to Mr. DeLucia by registered mail, return receipt requested, with a copy of it going regular mail to Mr. Eugene Bernstein, wherein I advised Mr. DeLucia that the case, his case for the years 1948, '49 and '50, had been referred to our office and offered him the opportunity of a conference.

Q. Did you ever see that letter again that you sent to Mr. DeLucia? A. Yes, it was returned to our office unopened.

Q. Has that letter and the envelope been made a 1504 part of your files? A. Yes, it has.

Q. Does it have a Government exhibit number now? A. Yes, it has.

Q. What is that exhibit number for identification? A. The exhibit number is Exhibit 192.

Q. Is that both the envelope and the letter? A. Both the envelope and the letter.

Q. What happened next in the chronology of events? A. I received a letter from Mr. Bernstein stating that he had received the copy of the letter that I had sent to Mr. DeLucia and suggested that a conference be held in my office on November 15, 1954 at 10:30 in the morning.

Q. Do you have that letter in your file? A. Yes, I have.

Q. What Government exhibit number has been assigned to it? A. That is Exhibit No. 193.

Q. What next happened? A. I wrote to Mr. Bernstein and confirmed the suggested date for the conference.

Q. Do you have a retained copy of the letter which
1505 you sent to Mr. Bernstein? A. Yes, I have.

Q. What is that exhibit number? A. That exhibit number is Exhibit 194.

Q. What next happened? A. On November 15, 1954, at approximately 10:30 a.m., Mr. Bernstein came to my office for the purpose of holding a conference with me in the Paul DeLucia case.

Q. Was a conference held on that date? A. Yes, it was.

Q. Who was present at the conference? A. Mr. Bernstein was present, Mr. William Ruggaber, our technical advisor, and myself.

Q. That took place in your office at what address? A. 17 North Dearborn, on the 16th floor.

Q. At what hour of the day? A. At 10:30 in the morning.

Q. Will you state the substance of the conference, please? A. I told Mr. Bernstein that the proposed case against Mr. DeLucia was based on the expenditures theory.

1506 I told him that the agent, after his investigation and as a result of his investigation, had determined that Mr. DeLucia had an additional income of $221,000 and corrected income of approximately $185,000.

1507 Q. Incidentally, Mr. King, how could he have a corrected income of $185,000 and additional income of $221,000? A. The difference between the two figures represents the amount of losses for those years shown on Mr. DeLucia's income tax returns.

I told Mr. Bernstein that the pertinent question in the case was the source of the expenditures, excess expenditures over reported receipts.

I told Mr. Bernstein that I was aware of the representations made before the Intelligence Division in behalf of the taxpayer concerning the $300,000, and that I was very much interested in knowing the source of this alleged sum of $300,000, where Mr. DeLucia had kept it, if he had it, and any other defenses or contentions that Mr. Bernstein desired to present to me in behalf of Mr. DeLucia.

Mr. Bernstein told me that at the time Mr. DeLucia appeared before the Kefauver Committee, the committee had asked him where in his home he had kept that money, and that Mr. DeLucia had requested for obvious reasons that he not be required to make answer to that question, 1508 and the request was granted.

He told me that there was a lawyer in Chicago who had seen and counted the money, and that there was one other person, he believed, who also had seen the money.

On inquiry, I learned from Mr. Bernstein that the name of the lawyer was Joseph Bulger. I asked for the name of the other person, and Mr. Bernstein told me that he did not know it, but would attempt to determine it and would let me know.

Mr. Bernstein stated that he would endeavor to arrange for Mr. Bulger to come into my office and relate the matter of the money to me.

Mr. Bernstein told me that he had made a very careful study of the case, and that he was convinced that the available cash to Mr. DeLucia over the period from 1935 to 1950 was sufficiently large to explain the excess expenditures over his receipts in the years 1948 and '49 and 1950.

He exhibited to me two summaries, one showing available

funds from 1935 to 1950, totaling approximately $922,000,
and another summary showing a figure of cash on
1509 hand as of January 1, 1948, of $300,000. Other additions to income during the years 1948, '49 and '50, and expenditures during those years with a net cash on hand figure of $51,000 at the end of 1950.

These figures demonstrated, according to Mr. Bernstein, that Mr. DeLucia and sufficient funds on hand to account for his excess expenditures during the years 1948 and '49 and 1950 over receipts reported.

I asked Mr. Bernstein if I could make a copy of each of those summaries, and he complied with my request.

I had my secretary make a copy of each of them, and I marked them as copies, and they are part of my file.

The conference concluded with a statement by Mr. Bernstein that he would communicate with Mr. Bulger and let me know when Mr. Bulger would be able to come in, and he thought that he would be able to come in within the next few days.

1510 Q. Was anything said in that conference, Mr. King, about the payment of gift tax on taxes paid? A. I informed Mr. Bernstein that I thought it was very strange that Mr. DeLucia, with such a substantial sum of money on hand during those years, would have allowed other people to come forward to pay his income taxes shortly prior to his parole, and that it was against Mr. DeLucia's best interests for him to do that, particularly in light of the fact that later Mr. DeLucia had to pay a gift tax on those taxes which were paid for him at that time.

Mr. Bernstein told me that at the time of Mr. DeLucia's parole from the penitentiary, there had been a great deal of publicity, and as a result a number of Government agencies had been watching him; these agencies being the

Federal Bureau of Investigation, in so far as Mr. Bernstein believed, the Immigration Service, and pos-
1511 sibly the Treasury Department.

He stated that people were following his every movement, cars were being watched that entered and left Mr. DeLucia's home, and that it was for that reason that Mr. DeLucia did not care to get in touch with the people who came forward and paid his taxes before he was released on parole.

He pointed out to me that Mr. DeLucia felt that if he had communicated with those people that possibly those people also would be the subject of Government investigations.

Q. Does that substantially conclude the conversation? A. Yes, that substantially concluded the conversation.

Q. Did you make a written memorandum of that conversation? A. Yes, I did.

Q. What Government exhibit number has been assigned to that? A. Government Exhibit No. 195, which includes
1512 the summaries, copies of the summaries, which Mr. Bernstein tendered to me, which are shown as Exhibits A and B attached to the memorandum.

Q. What happened next in the chronology of events? A. The next thing that occurred was on the morning of November 19, 1954, Mr. Bernstein telephoned me and told me that he had contacted Mr. Bulger, and that if it was agreeable to me, Mr. Bulger would be in that afternoon to relate the story of the money.

I asked Mr. Bernstein at that time if he had determined the identity of the other person whom he had mentioned to me on November 15 as having seen the money, and he told me that that was a mistake and there wasn't any other such person.

I told Mr. Bernstein that the afternoon of the 19th would be agreeable to me, and that afternoon Mr. Bernstein came into my office along with another gentleman, whom he introduced as Mr. Bulger.

Q. Did a conference then ensue? A. Yes, a conference took place on the afternoon of November 19 in my office.

Q. What did the conference consist of? A. The
1513 conference consisted of my questioning Mr. Bulger about $300,000.

1514 Q. Who was present during the course of that?

A. Present at that conference were Mr. Ruggaber, Special Agent Thomas Smith, Mr. Bulger, Mr. Bernstein, myself, and our office court reporter, Miss Ruth Halfeld.

Q. Was the conference recorded? A. Yes, it was recorded.

Q. Was the conference then typed up? A. Yes, it was typed up.

Q. What happened after that was typed up? A. After the transcript was typed, I contacted Mr. Bernstein and suggested that he and Mr. Bulger come into the office and look it over, and if it was satisfactory to Mr. Bulger, that Mr. Bulger sign it.

On December 3, 1954, Mr. Bulger and Mr. Bernstein came into my office, and they looked over the transcript. Mr. Bulger made some corrections to it, which he initialed, and he signed it in triplicate in my presence and in the presence of Special Agent Smith and Mr. Bernstein.

Q. Do you have a conference memorandum concerning that event or concerning the telephone call that preceded their coming into the office? What other documents
1515 do you have? A. No, sir, I do not have a conference memorandum on the telephone call with Mr. Bernstein, although there is—I do refer to it in the transcript of proceedings.

I have a memorandum of the signing of the transcript by Mr. Bulger on December 3, 1954, and also as a part of my file I have the original of the transcript signed by Mr. Bulger.

Q. Has that been marked with a Government exhibit number now? A. The transcript of proceedings is marked Government's Exhibit 196, and the memorandum for the file dated December 3, 1954, which relates to the signing of the transcript by Mr. Bulger, is marked Government's Exhibit No. 197.

Q. Are those all the exhibit numbers that you have there, all the documents? A. Yes, sir.

Q. Were all of those documents kept in the ordinary course of business of your office? A. Yes, they were.

Q. Is it your custom to keep such documents and
1516 records? A. Yes.

By Mr. Barnett: Your Honor, I offer in evidence now Government's Exhibits for identification Nos. 190, No. 191, No. 192, No. 193, 194, 195, 196 and 197.

By Mr. Stewart: I would say, your Honor, that his testimony is sufficient without things that he drew up. If we wanted to point out some discrepancies, that would be a different matter.

By The Court: I think that is correct with this witness. The witness testified completely and fully as to what was said and his own personal memo of it doesn't add to his testimony.

By Mr. Barnett: I will withdraw them, your Honor.

By The Court: It is different about the transcript which was signed. That is something else altogether.

By Mr. Barnett: Yes. I will reoffer then, Government's Exhibit 196, which is the transcript.

1517 By The Court: With no objection, it may be received in evidence.

1518 By Mr. Barnett:

Q. Mr. King, would you read for us Government Exhibit No. 196? A. The exhibit reads as follows:

Note: The witness read Government Exhibit No. 196 being a stenographic report of testimony given on November 19, 1954 before the witness by Joseph Bulger, which is as follows:

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE,
CHICAGO, ILLINOIS

TRANSCRIPT OF PROCEEDINGS

IN RE:

PAUL DELUCIA
RIVER FOREST, ILLINOIS

Conference Held:	Room 1652, 17 North Dearborn Street, Chicago, Illinois November 19, 1954 2:40 P. M.
Present:	
Joseph B. King	Assistant Regional Counsel
William M. Ruggaber	Technical Advisor
Thomas Smith	Special Agent, Intelligence For the Government
Eugene Bernstein	Attorney at Law Chicago, Illinois For the Taxpayer
Joseph L. Bulger	Attorney at Law Chicago, Illinois Witness
	Reporter: Ruth Elise Halfeld

Mr. King: Mr. Bulger, this office has before it the case of Paul DeLucia for the years 1848, '49, and '50, and recently Mr. Ruggaber here, Mr. Bernstein and I had a conference with Mr. Bernstein, who is Mr. DeLucia's tax attorney concerning that case. During the course of that conference, the question was raised as to funds on hand in the form of cash and in the possession of Mr. DeLucia

after Mr. DeLucia's release from prison in 1947, and available to Mr. DeLucia during the period 1948 to 1950. At this conference Mr. Bernstein stated that Mr. DeLucia had a substantial sum of cash on hand, and indicated that he had a—he knew the identity of an individual who had seen the cash in the possession of Mr. DeLucia, and on inquiry, I learned from Mr. Bernstein that the person was you—strike that—and on inquiry of Mr. Bernstein regarding the name of such individual, he told that that person was you.

I asked Mr. Bernstein if he would endeavor to have you appear in this office for the purpose of testifying concerning this matter—the cash on hand in the possession of Mr. DeLucia—and he indicated he would endeavor to do that. Subsequently, pursuant to arrangements made earlier today, Mr. Bernstein agreed to be in the office here at 2:30 this afternoon with you for the purpose of having you give testimony on this subject. If agreeable to you, I would like you to stand and have Mr. Smith, who is a special agent, swear you, and I'll ask you some questions concerning this matter.

Mr. Smith: Please raise your right hand. Do you solemnly swear that the testimony and the answers you are about to give to the questions that will be asked you will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Bulger: I do.

Mr. King: What is your full name, please?

Mr. Bulger: Joseph I. Bulger—B-u-l-g-e-r.

Mr. King: Where you live?

Mr. Bulger: 1103 19th Avenue, Melrose Park, Illinois.

Mr. King: What is your occupation or profession?

Mr. Bulger: Attorney at Law, 188 West Randolph Street, Chicago. I also have an office at 1818 Lake Street, Melrose Park.

Mr. King: How long have you been engaged in the practice of law?

Mr. Bulger: Sixteen years.

Mr. King: Do you know the taxpayer here, Mr. Paul DeLucia?

Mr. Bulger: I do.

Mr. King: How long have you known Mr. DeLucia?

Mr. Bulger: I have known Mr. DeLucia about 35 years—wait a minute—30 years.

Mr. King: Have you represented Mr. DeLucia in your capacity as an attorney over those years?

Mr. Bulger: Yes, I have.

Mr. King: For how long a period?

Mr. Bulger: I would say a period of about 20 years—I mean 16, pardon me.

Mr. King: What type of legal work have you done for Mr. DeLucia generally over that period?

Mr. Bulger: Well, I represented Mr. and Mrs. DeLucia in some real estate matters. I also represented him in a personal injury case—he had a broken hip, leg, and broken ankle received in an elevator accident. I also represented him in a matter of an insurance loss. I also represented him in a criminal case involving extortion in New York City—that is, the trial was held in New York City. That's about it. I drew up a land trust for him involving the farm,—I represented him at the time of the sale. Generally, that's about the most important ones I remember.

Mr. King: Mr. Bulger, do you have any personal knowledge of the amount of cash that Mr. DeLucia had on hand at the time he came out of prison in about 1947?

Mr. Bulger: Yes, I do.

Mr. King: How do you come by that knowledge?

Mr. Bulger: Well, we had been on trial in New York City from October—about October 2nd—until—a so-called movie extortion case. We started trial there in October of

1943. We tried the case—actual trial of the case ended on December 22nd or 23rd of '43—1943. I was engaged several months prior to that trial and did considerable work on it—'came very well acquainted with Mr. DeLucia and other members in that trial. Mr. DeLucia was sick. He had a kidney stone attack. At least he was told by the doctor. He went to the hospital and lost a kidney.

Mr. King: When was that?

Mr. Bulger: He had a kidney attack while trial was in progress, and think he went to the hospital and was under the doctor's care all the time. He didn't have an operation when the trial ended, but day before Xmas—I think Xmas Eve we got back to Chicago, and before we got to Chicago he asked me to stop at his house, he had something very important to talk about. I think it was Christmas Day or Christmas I went to his house, went into one of his bedrooms and he said he had a lot of money and that he wanted somebody to know about it and wanted to put it away, and if anything happened to him in prison—he expected to be convicted—when he was in prison because he was a diabetic, he wanted somebody to be sure to know about this and take care of his wife and children. So we sat there, talked a little bit, he came out with a metal box that had a key and lock. He opened it up and there were a considerable amount of money. He said it was something like $300,000. There were $100 bills that were in $5,000 packages, wrapped with a rubber band. I said I think it best if I counted it. I counted the whole $300,000. There was some, I think, $15,000 of bills in $500 denominations, with 250,000 in $100 bills and $15,000 in bills of 500 denominations, and the balance in $1,000 bills. He had one $10 bill, which was a gold note—a big thing. I counted it all and put it in the box. Then there was a question of where to put it, and after a little discussion, we decided we would hide it in his home, and we did.

Then we went back to New York—that is, I went back before he did—I don't remember whether it was a day or two before—and he was sentenced. I worked on the appeal for, I think, another six months, and he went to prison, and we made all kinds of motions for bond—all unsuccessful—and he finally decided to waive and start serving his sentence, and while we were engaged in the Circuit Court of Appeals, he started serving time—he went away—when he got out a week or so afterwards. I forgot to mention the key to the box. I kept the key, I locked the box and kept the key all the time he was in prison. When he got out of prison in '47, a couple of weeks after he was home, I went over to his house and went to the place we hid this box, took it out, and I opened it and it was still the same it was when I put it away. I counted it again, wrapped it all up, put it in the box, and gave it to him, had a drink or two, and left.

Mr. Bernstein: Can I interrupt? What year was it you counted it?

Mr. Bulger: 1947—1947, I think in October.

Mr. Bernstein: After he got out of prison?

Mr. Bulger: About two weeks after he got out.

Mr. King: Do you know where the box was kept in his home, Mr. Bulger, while he was in prison?

Mr. Bulger: Yes.

Mr. King: Where was it, please?

Mr. Bulger: In the attic.

Mr. King: What were the approximate dimensions of this metal box?

Mr. Bulger: About the size of this paper basket—only much higher and maybe a little shorter.

Mr. Bernstein: About two feet?

Mr. King: As a good lawyer, would you indicate for the record—

Mr. Bulger: I was going to describe it, and you can say —this box is over, I would say, about one foot long—a little over a foot, maybe 14 inches, 8 inches high, and about as wide as this box—this letter container here.

Mr. King: And that letter container you would estimate to be about how many inches wide?

Mr. Bulger: About 14 by 8 by 10, the way I can remember how many packages went into the box—50 packages, 50 100 dollar packages, wrapped up in 5,000 packages, the rest 500 bills and the balance in 1,000 bills that were loose.

Mr. King: Do you recall exactly how much money was in the box?

Mr. Bulger: Three hundred thousand, plus $10.

Mr. King: Now you say the first time you counted this money was in the latter part of December, 1943, and—

Mr. Bulger: The year of his trial—the year he was tried.

Mr. King: And the next time you counted it was approximately a week or so after he was released from prison, which was in—

Mr. Bulger: About two weeks afterwards—I think a couple of weeks.

Mr. King: Was that in 1947 do you know, Mr. Bulger?

Mr. Bulger: Yes, in 1947. That's the year he got out.

Mr. King: Do you know if anyone else than yourself knew about this money?

Mr. Bulger: Well, he told the Kefauver Committee he had the $300,000. That was the time they were here in Chicago. I don't think there was any investigation on his income tax, was there?

Mr. Smith: I think when Mr. King had in mind was in 1943 and '47.

Mr. Bulger: I know I had knowledge. Whether he told anybody else, I don't know. I never discussed it with him.

Mr. King: Do you know whether or not his wife, or any other members of his family, knew about this money?

Mr. Bulger: No, his wife didn't know a thing about it. Neither did his children.

Mr. King: Was this money kept in a secret place up in the attic?

Mr. Bulger: That's right. You want me to describe the attic?

Mr. King: I would like you to, yes, please.

Mr. Bulger: It's a two story building, a residence off the street. It's got, I think, three entrances—front, one on the side, one in the back, and it has a staircase off the main entrance from the street, and you go to the second floor where he has bedrooms. Then he has a stairway going to the attic. The attic was a sort of a gabled roof affair, quite roomy, and extended all the way across the building, both sides—sideways and longways. He had considerable knickknacks, children's toys, old furniture. He had radio antennas up there. This gabled roof, the pitch comes to an angle and straightens out. He had it all boarded up. At least this place I put the money was right overhead in the center of the house, towards the front. It has a thick composition covering. It wasn't wood—I think you would call it new wood—it was a thick slab of this material that goes towards the center—that's part of the center—and that's where we hid it. He was there.

Mr. King: Were you the one who put the money there—or the box there, Mr. Bulger?

Mr. Bulger: Yes. I put the box in the slot—this space. There's a space between the ceiling of this gabled roof. There's some rafters there, and there's a space between that and the roof of the building which was nailed. I pulled it down. I put the box there and put the panel back and nailed it on.

Mr. King: So that you might say this money was placed in an enclosed compartment in the attic—

Mr. Bulger: That's right.

Mr. King: Of Mr. DeLucia's home?

Mr. Bulger: That's right.

Mr. King: Did you retain the key?

Mr. Bulger: I kept the key.

Mr. King: How long did you keep it?

Mr. Bulger: I kept it from the time I put the box in the attic in '43 until the day we went up there and took the box out and I opened it.

Mr. King: What was the condition of the box and its contents at the time you went up there after Mr. DeLucia's release from prison, as compared to its condition when you put it there in 1943?

Mr. Bulger: There was no change. It was in the same condition the day I put it there to the day I took it out. It was a little dusty on the outside. The inside was the same condition.

Mr. King: Now when you took out the box in 1947, I believe you stated Mr. DeLucia was present with you then?

Mr. Bulger: Yes.

Mr. King: Did you count the money again at that time?

Mr. Bulger: Yes, I did.

Mr. King: Where did you count it?

Mr. Bulger: Right up in the attic.

Mr. King: And the amount was the same?

Mr. Bulger: The amount was the same. The package had not changed at all.

Mr. King: Have you seen that money since 1947?

Mr. Bulger: No, sir.

Mr. King: Have you had any conversation with Mr. DeLucia concerning that money since 1947?

Mr. Bulger: Well, yes, I think at the time he was subpoenaed to go before the Kefauver Committee. I don't remember how it took place. I think he was out on parole, and he asked me at that time what he should do. I said tell the truth—tell them you have this money, and he did. Of course, I have seen him recently—we have discussed it with Mr. Bernstein.

Mr. King: Did he mention to you at the time you first saw this money how he came to have it?

Mr. Bulger: No, I don't think we discussed that. I don't remember at least.

Mr. King: You didn't happen by any chance at the time you counted it the first time, or the second time, to mark down the numbers of the bills, did you?

Mr. Bulger: I didn't think it necessary.

Mr. Bernstein: You mean serial numbers?

Mr. Bulger: There was no occasion for me to make any notes.

Mr. King: On the second occasion that you counted the money, did Mr. DeLucia indicate to you how he was going to safeguard it in the future?

Mr. Bulger: I think he said he was going to spend some of it. I don't remember the conversation. I think he said he was going to spend some of it on the farm. He had a farm. I don't know what he spent it for.

Mr. King: Did he say he was going to put it in a place safer than up in the attic where it had been stored?

Mr. Bulger: No, my impression was he was going to spend it.

Mr. King: Do you happen to know how he safeguarded that money after it was counted on the second occasion?

Mr. Bulger: You mean what he did with the box on the second occasion?

Mr. King: Yes.

Mr. Bulger: I wouldn't know what he did with it.

Mr. King: Was anyone, other than you and Mr. DeLucia, present at either of these two occasions when the money was counted?

Mr. Bulger: No, sir. We were alone all the time—that is, we were alone in his attic and in his bedrooms. He had guests in the house and he had his family there.

Mr. King: Now on the occasion of this first time when you say Mr. DeLucia told you about the money, I believe you mentioned you were in his bedroom?

Mr. Bulger: Yes.

Mr. King: And where did he go to get the box at that time?

Mr. Bulger: He had it right there. He had it there—the box was on the table. He had a night stand, and it was on the night stand. I don't remember whether he opened a drawer of the night stand, but it was there in the room. You see, we had an appointment for that particular night. I talked to him that morning, and I was to be at his house after supper. It was between 7:30 or 8:00, so when I came, he was waiting for me. We had made a telephone appointment that morning, and I told him I could be there that night—not in the daytime. I got there after supper between 7:30—8:00 o'clock that night.

Mr. King: Mr. Bernstein, do you have any questions you would like to ask Mr. Bulger?

Mr. Bernstein: No, sir, I haven't any questions to ask.

(Off the record conversation)

Mr. King: Mr. Smith, do you have any questions?

Mr. Smith: Mr. Bulger, did Mr. DeLucia make any statements to you on the occasion of the first counting of this money as to why he was entrusting you with this responsibility and not a member of his family, his wife, or anybody else?

Mr. Bulger: Yes, he said he was not too sure about his wife. He wasn't sure what she would do if she got this money in her hands. The children were small, he didn't know whether he would ever get out of prison—he wanted to be sure somebody took care of his children. He did say if he—

Mr. Bernstein: You mean to say he wasn't sure if he got out of prison—you were speaking of his physical condition?

Mr. Bulger: No, he didn't want to trust his wife with the money. He was afraid he wouldn't get out of prison alive.

Mr. Bernstein: That's what I was trying to get at.

Mr. Bulger: He wanted to be sure she wouldn't spend the money, get a divorce—things of that sort.

Mr. Ruggaber: Is that his first or second wife, do you remember?

Mr. Bulger: I think his first wife. I don't know for sure how many times he's been married. I have known her family for a number of years—her father—her brothers. She was sickly a very emotional woman, not too bright—I mean in a business sense.

Mr. Bernstein: Let me add this: Several times I requested certain Committees not to call her in because of her emotional condition. I know she was going through the change of life, she had an operation, she was a sick woman, and there was some question about her condition for some time, and that's the story I have received, and the Committees excused her from coming in.

Mr. King: Mr. Bulger, during the period of time Mr. DeLucia was in prison, did you check into the financial condition of Mr. DeLucia's family to determine how they were getting along in order to determine whether or not you might be required to use some of this money to help the family?

Mr. Bulger: No, I never inquired except once or twice I went to visit Mrs. DeLucia as a friend, and I asked her if she needed anything from me or anything, but she never made any request of me for assistance.

Mr. Bernstein: In that regard, do you know that was the only money he ever had?

Mr. Bulger: I don't know.

Mr. Bernstein: Only so far as what he showed you?

Mr. King: At the time Mr. DeLucia let you know of this money and exhibited it to you the first time, did he authorize you to use any portion of it for family purposes while he was in prison?

Mr. Bulger: No—never authorized me to do anything. His only request was if he by any chance died in prison or something happened to him while he was in prison he wanted to make sure his children wouldn't be out on the street. He didn't trust his wife with that amount of money. I told him at the time if anything did happen to him we would have to throw it into an estate and let the court distribute it.

Mr. King: Did you disclose this information that you received from Mr. De Lucia concerning this money to anyone during the period of time Mr. De Lucia was in prison?

Mr. Bulger: No sir.

Mr. King: Do you have any further questions, Mr. Smith?

Mr. Smith: During the first discussion, did Mr. De Lucia leave specific instructions as to the distribution or manner of distribution in the event something happened to him.

Mr. Bulger: It reminds me—we talked about a will. It was brushed off—it was a short conversation. It seemed to satisfy him if anything happened to him that that

amount of money would have to go into an estate and distribution would be according to law. That seemed to satisfy him and that was the end of it.

Mr. Ruggaber: At any time while he was in the penitentiaries, primarily first at Atlanta and then Leavenworth, did you contact him there by personal visit?

Mr. Bulger: No—no sir, I never visited him in jail at any time. I might embarrass Mr. Bernstein a little bit, by answering that question.

(Off the record conversation)

Mr. King: Mr. Bulger, did you communicate with Mr. De Lucia either by mail or any other way while Mr. De Lucia was in prison?

Mr. Bulger: No, I never communicated with him, although I knew he was there, getting along all right. I know other lawyers wanted to see him, his family wanted to see him—I knew the limitations on visitors.

Mr. Bernstein: As far as I know, he couldn't get in unless he was the lawyer on record.

Mr. Bulger: They won't allow it without prior approval, and I never attempted to inject myself in just to get down to see him, because there was nothing to discuss. I knew he had other lawyers working on his parole. On income taxes I knew Mr. Bernstein was in the picture. I kept myself informed on things generally. I let it go at that.

(Off the record conversation)

Mr. King: I don't have any further questions. Does anyone else here wish to ask Mr. Bulger any questions? Well, do you have anything further you would like to add to this record, Mr. Bulger?

Mr. Bulger: No sir.

Mr. Bernstein: You know Mr. De Lucia was an ill man?

Mr. Bulger: Yes.

Mr. Bernstein? Did you know he was suffering from diabetes and this kidney difficulty in 1943?

Mr. Bulger: Yes.

Mr. Bernstein: Would you know whether he was operated subsequent to his release from the penitentiary or jail?

Mr. Bulger: Yes.

Mr. Bernstein: Do you know he had his kidney removed?

Mr. Bulger: Yes.

Mr. Bernstein: When?

Mr. Bulger: Subsequent.

Mr. Bernstein: He was confined to the hospital for some time as a consequence of that operation?

Mr. Bulger: He has been in the hospital and clinics since his accident in the passenger elevated.

Mr. Bernstein: When he had his apprehension about not coming out of the penitentiary, he had in mind, so far as you know, his physical condition, which prompted him to make that statement.

Mr. Bulger: That, in effect, and that his wife was unstable. He was sick, she was emotional—she was unstable—she wasn't too reliable.

Mr. Bernstein: And no one knew where this box was situated, so far as you know, from the time it was placed there in 1943 to the time subsequent to his release from the penitentiary in '47?

Mr. Bulger: That's right.

Mr. Bernstein: That box was in the same condition in '47 as it was in '43?

Mr. Bulger: That's correct.

Mr. Bernstein: Nothing added or detracted.

Mr. Bulger: That's right.

Mr. Bernstein: Do you know whether Mr. De Lucia had any sums in addition to that in the box?

Mr. Bulger: I knew he had some in addition, but I don't know how much.

Mr. Bernstein: That's all.

Mr. King: Mr. Bulger, has anyone influenced you in any manner to give the testimony?

Mr. Bulger: No sir. I have done so reluctantly, Mr. King. I have given this reluctantly, because I have had no rest since this movie trial in New York.

Mr. Bernstein. Were you forced to come in here by anybody to make this statement?

Mr. Bulger: No, Gene. I told you I would rather not if you could do without me. I didn't want any publicity.

(Off the record conversation)

Mr. King: Do you know whether Mr. De Lucia had a key to the box besides the key he gave to you?

Mr. Bulger: No, sir, there was only one key, and I took it.

Mr. King: You don't know whether there was any other key in being to that box?

Mr. Bulger: No sir, there was only one key. That was the one I closed the box with. I took it.

Mr. Bernstein: When you opened the box on the second occasion in 47, was the large $10 bill still in the box?

Mr. Bulger: It was still there. I tried to take it on Paul, and he wouldn't give it to me.

Mr. King: And the statements you have made today, Mr. Bulger, concerning the counting of the money on the two occasions you have testified today here—

Mr. Bulger: Yes sir—

Mr. King: are the truth?

Mr. Bulger: The whole truth.

Mr. King: And you will be willing to sign this transcript of testimony after it is completed and you have examined it?

(Off the record conversation)

Mr. Bulger: Well, I'm not going to say I will, and I'm not going to say I won't at this time. If it's something that's going to have to be done, I'll do it. If I can avoid it, I'm going to avoid it.

(Conference Concluded 3:45 P. M.)

I have read the above and foregoing statement by me made, consisting of 15 pages; have made the corrections thereon and approved those corrections by placing my initials opposite each correction. The above statement is true and correct.

December 3, 1954
Date

Joseph I. Bulger

1556 By The Court: Let me give the jurors ten minutes recess.

(Thereupon a short recess was taken.)

By The Court: What I wanted to add when the jury was coming out before, nothing particularly in response to anything anybody said, but if I had thought there was anything in there that had any bearing on the testimony of that witness or any relation to his testimony going beyond the question of bearing upon it or subject to cross examination—I am not even thinking about that—I would have had a different conclusion.

I just want the record to show that.

By Mr. Barnett: Your Honor is referring to Tom Smith and the documents?

By The Court: I am referring to the documents, excluding the documents that I permitted them to have. I
1557 am referring to these documents which I excluded.

By Mr. Barnett: Yes, sir.

By The Court: Bring out the jury.

Testimony of Jack Gibson.

1563 JACK GIBSON, testified as follows:

Direct Examination

By Mr. Barnett:

In April 1944 I was parole assistant at the United States Penitentiary, Atlanta, Georgia. Interviewed Paul DeLucia.

1565 What did Mr. DeLucia tell you about his previous employment? A. He obtained employment as an assistant manager in a theatre here in Chicago, I believe in 1920, until 1924. He owned two restaurants after that time until 1930.

Then I believe he became an officer of the Playhouse Corporation here in Chicago in 1930 to 1941, and for
1566 about a year following that he managed an operated his 1100 acre farm.

Q. These things he told you in that interview, is that correct? A. Yes, sir, all of those things were his statements.

Q. Now during the course of that interview, did you inquire about Mr. DeLucia's marital history? A. It was necessary to do so.

Q. What was said about that? A. He was happily married. They had three children. He married in, I believe, 1927, and reunion with his wife and family was anticipated.

Q. Was anything said about his wife's financial capacity? A. He said that he left her sufficient money and income to take care of herself while he was incarcerated.

Q. During the course of that interview, did you ask questions and did Mr. DeLucia make answers concerning his own financial resources? A. Yes, sir. It was necessary to do, to develop that information too.

Q. Would you tell us what was said about that?

1567 A. He told me he owned a home in River Forest, Illinois. He also owned a country home and an 1100 acre farm.

Each time we list those things, we would ask, "Anything else?" He didn't say it all at once. We got it down one at a time.

Q. Repeat the conversation as best you can. A. And I believe there was a $90,000.00 mortgage.

1568 Q. Tell us what you said and what he said, please.

A. Oh, he told me he owned the home in River Forest, Illinois, and I ask him what else, anything else? And he told me about the country house and the 1100 acre farm.

I said, "Anything else ?" and he said, "Oh, yes, there is a mortgage on the farm," and he told me the amount.

I asked him, "Anything else?" He said, "Yes, there was income from rental of the farm around $7,000 or $8,000 a year."

Then I asked him, "Anything else?", and apparently that was all. He didn't give me any other information.

Q. Now at the time you were having this conversation with Mr. DeLucia, did you make notes of the conversation? A. Oh, yes.

Q. Did you type or did you cause to be typed a report of that conversation? A. Yes, sir.

Q. Is Government Exhibit No. 202 the Multilith copy of your report concerning that conversation?

1569 A. Yes, sir.

By Mr. Barnett: I am withdrawing Government Exhibit No. 202 if Mr. Stewart still objects to it.

1591 *Testimony of Joseph J. Butler.*

JOSEPH J. BUTLER, testified as follows:

Direct Examination

By Mr. Barnett:

I am Judge of the Municipal Court, prior to that I was a lawyer in general practice.

1593 Q. During the year 1948, were you retained to prepare a mortgage on certain property owned by Mr. Paul DeLucia? A. I was.

Q. By whom were you retained? A. By Mr. Hugo Bennett of Chicago, Illinois.

Q. Would you relate the circumstances under which you were retained? A. Yes. In July of 1948, Mr. Hugo Bennett, whom I had known twenty years prior to that from school days, walked unexpectedly into my office and retained me to draw a mortgage, a trust deed, which is the same thing, in the sum of $40,000.00.

Let us put it this way: He came in and said he wanted to lend $40,000.00 to one Paul DeLucia. He told me later, a few minutes later—he was not hiding it—that Paul DeLucia was known as Paul Ricca, who I did not know.

I said I would draw such a mortgage for him. I did advise him to get security for his loan.

He says, "That is just what I want. I want to be assured of my loan."

So, I drew a trust deed on a piece of property 1594 owned by Paul DeLucia.

The property was in Indiana. We had the abstract of title brought up to the date from the LaPorte Abstract Company. They had no guarantee policy at the time.

And, I made myself trustee on that $40,000.00 mortgage on that deed. So, I read that abstract, because I have no title guarantee company who does that for the people in Chicago, and found the title good; recorded the mortgage.

I am ahead of myself. Before I recorded it, I had to have Mr. Bennett tell Mr. DeLucia, who was borrowing the money from Mr. Bennett, to come into my office to sign the mortgage on this property, so he would get the money.

The first time he came in, I remember I did not have it prepared—I was busy on other matters. I asked
1595 him to come back in a few days.

He came back in a few days, signed the mortgage in my presence.

In the meantime, Mr. Bennett had sent me a check for $20,000.00. I believe it was a certified check or cashier's check. Now I just don't remember it.

I believe also it was on a Florida bank, and I did not give that check to Mr. DeLucia that day because I had to have the mortgage notarized before I had it recorded. I could not notarize it. My office could not. Our office did not know Mr. DeLucia. He was not my client; Mr. Bennett was, you see.

So, I told Mr. DeLucia to go out to somebody he knew, a notary that he knew, and have him acknowledge his signature, which he did.

He brought it back, I believe, the next day and at the directions of Mr. Bennett, I passed over to him the $20,000.00 check that I had had in my drawer.

I then recorded the mortgage up in LaPorte County, I believe it is, Indiana, the situs of the real estate, and that's all I know about the first mortgage.

• • •

1598 Q. Subsequent to the middle of 1948, did you have anything to do with another mortgage on property of Paul DeLucia? A. Yes. Mr. Bennett called me in—I think it was May of 1949, now, or May of 1950. I am not sure. Perhaps you can refresh my memory.

Q. I have here, Judge Butler, Government Exhibits 89-A and 89-B, which may refresh your recollection. A. Yes.

In May of 1950, Mr. Bennett called me on the telephone and told me he wanted to lend another $40,000 to the same borrower, Paul DeLucia, and wanted me to
1599 draw another mortgage but on another piece of property.

He wanted to draw it on a piece of property in Kendall County, Illinois. I think it is south; wherever it is at, I think it is in Illinois.

And, I said, "That is all right." This time I did not have to have anybody in because this was done by mail.

He told me the title of the property was on the Oak Park Bank, as trustee.

So, I immediately called the Oak Park Bank and had them mail to me their form by which the beneficiaries direct the trustee to draw a mortgage.

1600 So, I mailed those to Mr. Bennett, who, I presume, mailed them to Mr. DeLucia, who mailed them to Mr. Bennett, who mailed them back to me, signed by his wife Nancy.

I mailed that letter of direction to the Oak Park Bank, the trustee, who, by the way—with a mortgage, a Chicago Title and Trust Company mortgage, because this is Illinois property—to the bank, and they, of course, acting on the letter of direction, as a trustee should, signed the mortgage.

I never saw any of that money. I don't know anything about it after that. No. I recorded the mortgage also.

Q. Will you look at those two documents that I put on the counter before you and identify them for us, please? A. Yes. Government's Exhibit 89-A is a trust deed from the Oak Park Bank, as trustee, from Chicago Title and Trust Company as trustee to a mortgage guaranteeing a note for $40,000.00.

Q. Was that prepared by you? A. Yes.

Q. What is the other document? A. This is signed
1601 by the Oak Park Bank, though, because they are the owners under a trust deed, not the beneficial interest. The other document is a release, Government's Exhibit 89-B, from the Chicago Title and Trust Company as trustee to Oak Park National Bank, and that is a release deed for the mortgage I just described, signed by the Chicago Title and Trust Company, as trustee.

Q. Did you have anything to do with the release? A. Nothing with that release at all. You see, in the first case I was trustee because it was out of the state.

Q. I see. A. In the second case the Title and Trust Company was trustee. That property was in the state and they could act as trustee.

Q. The first mortgage you refer to on the Long Beach property was released in 1951, correct? A. That is correct.

Q. What is the exact date of the release? A. March, 1951. Let me see. The release was recorded in LaPorte County on the 27th day of March, 1951.

1602 Q. And do you have the date of the release of the mortgage on the Kendall County property? A. That was recorded in Kendall County, that release, in March—the 26th day of March, 1951—one day apart.

1603 Q. You told us that you turned over the check of $20,000 to Mr. DeLucia in connection with the first mortgage which you prepared, right? A. Yes, I did.

Q. And that was the total amount of the consideration that you actually handled? A. Yes, Mr. Bennett, if I remember, was going out of town and left the check with me and told me to give it to him when the deal was consummated.

Q. Did you have anything to do with the transfer of funds in connection with the mortgage which was made in 1950? A. No, nothing at all. I didn't see any checks.

Q. No funds passed through your hands? A. None at all.

Q. Now the mortgage in 1950, what type of mortgage was that? A. They were both trust deeds.

Q. First or second mortgage? A. Oh, the first mortgage was a first mortgage.

Q. The 1948? A. And the second mortgage was 1604 a second mortgage. There was a previous mortgage on there. It was a second. So, as our state law requires, it was so documented—it is. This mortgage is a second mortgage.

Q. In connection with the mortgage in 1948, was the $20,000 check given to you before or after the mortgage was recorded? A. Oh, before.

Q. Before? A. Sure, because I would not give that check to Mr. DeLucia until he came in and signed the mortgage we prepared, and until he took it out and had it notarized. I am quite sure—now it is twelve years ago—but I am quite sure that is the circumstance. That was ten years ago.

Q. But the mortgage was for $40,000? A. Right, each mortgage for $40,000.

Q. Do you know how the other $20,000 passed? A. I haven't any idea, no.

1606 *Testimony of George Dick.*

GEORGE DICK, testified as follows:

Direct Examination

By Mr. Barnett:

1606 Q. What is your occupation? A. Vice President of the Peoples Bank of Bloomington.

Q. How long have you been in that position? A. Approximately eleven years.

Q. During the early part of 1951, did you have occasion to meet the defendant in this case, Mr. Paul DeLucia? A. I did.

1607 Q. Will you relate the circumstances under which you met him? A. We had a customer of the bank by the name of Richard Condon who came to us with the purpose in mind of buying a farm. We have a farm management department. He was interested in our managing the farm for him.

Our farm manager, Mr. W. P. Scott, contacted Mr. Willian Cusick of Joliet, Illinois, a real estate dealer who showed Mr. Scott and I the farm. At that time I met Mr. DeLucia.

Q. On the occasion of your first meeting with him, what occurred? A. Mr. Scott, Mr. Cusick and I had lunch with Mr. DeLucia at the farm, and he showed us around the farm.

Q. Will you tell us as nearly as you can where the farm is located? A. It is the southeast corner of

1608 Kendall County, Illinois, near Lisbon.

Q. How far from Joliet? A. Approximately twenty-six miles west.

Q. How long did you remain on the farm on that occasion? A. Oh, I would say approximately three hours.

Q. Did you discuss the price of the farm? A. Just in a very general way as to what Mr. DeLucia was asking for the farm.

Q. And what was he asking? A. As I recall it was $450.00 an acre.

Q. Now this conversation or this meeting took place in January or February of 1951, did it? A. As I recall it was late in January of 1951.

Q. Did you subsequently have another meeting with Mr. DeLucia? A. I did.

Q. About how long after the first? A. Just a matter of a few days.

Q. What were the circumstances of that meeting? A. Mr. Condon, Mr. Scott and myself went to the farm with the purpose in mind of showing it to Mr. Condon to see if he would like to purchase it. We had lunch at the farm and drove around the farm and looked it over, 1609 Q. Did Paul DeLucia drive you around the farm?

A. He did the first time, and as I recall, he did the second time. He was with us.

Q. Did you discuss price at that time? A. Again in a general way.

Q. What did Mr. Condon say, if anything, concerning his interest in the farm? A. Mr. Condon was quite interested in it, and he let it be known that he was.

Q. Subsequently, on February 8, 1951, was a contract of sale signed in connection with that transaction? A. You say was it signed?

Q. Yes. A. Yes.

Q. Where was that contract signed? A. The Oak Park National Bank of Oak Park, I have forgotten.

Q. Were you present at the signing? A. I was.

Q. Who else was present? A. Mr. DeLucia, Mr. Condon, Mr. Scott, Mr. Hal Stone, an attorney from
1610 Bloomington, Illinois who represented Mr. Condon, Mr. Cusick, Mr. Bulger, two gentlemen from the Oak Park Bank—at the moment I can't recall their names—Mr. DeMasso, and—

Q. Could you identify the Mr. Bulger you referred to? A. Yes, I do.

Q. That is Mr. Joseph Bulger, the co-defendant here? A. That is right.

Q. What was his position in this transaction? A. He represented Mr. DeLucia.

Q. Is Government Exhibit No. 98 the contract of sale or copy of the contract of sale which was signed on that occasion? A. It is.

Q. Was there any discussion at that meeting when the contract of sale was executed concerning a mortgage on the farm? A. At that time we knew that there was a mortgage to the Prudential Insurance Company. The contract of sale required that the deed be free of any mortgage.

1611 Q. Was there a discussion about that? A. Some. As I recall Mr. DeLucia did not want to obtain the release of the Prudential mortgage but not—he didn't oppose it too strenuously.

Q. And Mr. Condon, what did he say about it? A. He wanted it released.

Q. And the contract as it was subsequently drawn, did it call for the sale of the property free and clear of encumbrances? A. It did.

Q. Was there any discussion at that time about a second mortgage on the Kendall County farm? A. I don't believe there was.

1612 Q. Subsequent to the signing of that contract, what did you do? Did you leave the premises, the Oak Park Bank? A. Yes. We went back to Bloomington. Mr. Condon went back to New York.

Q. Was the sale of the property subsequently consummated on March 15, 1951? A. It was.

Q. Where did that take place? A. At the same bank in Oak Park.

Q. Now between February 8, 1951, and March 15, 1951, did you become aware of there being a second mortgage on the Kendall County farm? A. I did.

Q. Do you recall the amount? A. $40,000.00. I am not sure that it was an even $40,000.00, but that was approximately it.

Q. During that same period, February 8, 1951, to March 15, 1951, did you see Mr. Paul DeLucia? A. I did.

Q. Where did you see him? A. At his farm in Kendall County.

Q. Who was present at the time you saw him? A. Mr. Scott went up there with me. We were the only two
1613 that went up from Bloomington.

Q. Did you have a conversation with Mr. Paul DeLucia at that time? A. I did.

Q. Was the conversation in the house or outside? A. In the house.

Q. In that conversation did you discuss the first mortgage to the Prudential Insurance Company? A. I did.

Q. What was said by you and by Mr. DeLucia? A. The Prudential Insurance Company was objecting to releasing the mortgage that they held. Mr. DeLucia said that he had been advised that they would demand quite a penalty for its release; that he would like to get out of having to obtain a release on the Prudential mortgage.

Q. In that same conversation, did you talk about a second mortgage on the property? A. I did.

Q. What did you say and what did Mr. DeLucia say about the second mortgage? A. We told Mr. DeLucia that we had discovered a second mortgage on the property.

He said yes. I told him, of course, that that would
1614 have to be released. He agreed to obtain a release on it. He said that there was no difficulty, that it was a friend of his, that he didn't owe it anyway.

Q. Now subsequent to that conversation, did Mr. Condon and Mr. DeLucia or did Mr. Condon agree to accept the property and assume the Prudential mortgage? A. He did.

Q. And the matter was closed then on March 15, 1951? A. That is right.

1625 HARRY WINKLEBLACK, testified:

Direct Examination

By Mr. Barnett:

Q. Where do you live, Mr. Winkleblack? A. In the State of California.

Q. What is your occupation? A. I am purchasing agent for a steel company.

Q. How long have you been so employed? A. Five years.

Q. Have you ever been convicted of a criminal offense?

A. Yes, I have.

Q. Will you state the record of your convictions, please?

A. I was convicted in Livingston County, Illinois in January, 1942 on the charge of burglary in a tobacco warehouse.

1626 I was sentenced to a term of one year to life in the Illinois State Penitentiary at Pontiac, Illinois. I was released in September, 1943, paroled to the United States Army.

I violated that parole in 1944 by committing a Federal offense, mail theft, in the State of Iowa. I was sentenced to Leavenworth Penitentiary in September, 1944, for a term of five years for mail theft.

I was released from Leavenworth in February of 1948, returned to the State of Illinois as a parole violator at Southern Illinois Penitentiary, Menard, Illinois.

I was returned to the Circuit Court in Livingston County for resentence under the new definite minimum or maximum law, given a term of one to three years in the Illinois State Penitentiary at Joliet.

I was released and discharged at expiration of sentence in October, 1950.

I was arrested in March, 1951, in Alameda County, California, given a one to ten year term for possession, rather transportation of narcotics. I was admitted to San
1627 Quentin Penitentiary in June, 1951, returned to San Mateo County Circuit Court in July, 1951, on a charge of possession of narcotics in my home in San Mateo County, given an additional term of one to fifteen years to run consecutively with the one to ten from Alameda County.

I was returned to San Quentin Penitentiary in July, 1951, released on parole from San Quentin in June, 1953, and discharged from parole in June, 1957.

1628 Q. Will you state the period that you were at Leavenworth prison, please? A. I was at Leavenworth from September, 1944, until February, 1948.

Q. And is that prison the Federal prison at Leavenworth, Kansas? A. Yes, sir.

Q. While you were in the Federal prison at Leavenworth, Kansas, did you meet the defendant, Paul DeLucia?

A. Yes.

Q. Do you see him in the court room? A. Yes, I do.

Q. Sitting at counsel table? A. He is the gentleman at the end of the table.

Q. What were the circumstances under which you met Mr. DeLucia? A. I had been in Leavenworth about a year and Abe Chapman, another inmate at Leavenworth and Nick Circello—

Q. Without going into that, what was your position in the prison? A. I was the secretary to the record clerk.

1629 Q. You were an inmate? A. Yes, sir.

Q. And in that position, did you have an opportunity to arrange for movement of prisoners within various cells? A. I worked in the same office where the assignment—where the offices were located, yes, sir. I was able to get men in certain cells.

Q. Did you occasionally hear of new prisoners coming to the prison? A. Yes, I did.

Q. And did you sometimes make arrangements for the place where they were to be, what cell they were to be put in? A. In some instances.

Q. All right. Did you do anything like that in connection with Mr. Paul DeLucia? A. Yes, I did.

Q. Did you hear that he was coming to the prison? A. Yes, sir.

Q. Did you hear of any others coming to the prison at the same time? A. Yes, sir. I had word from the last transfer of prisoners from Atlanta that on the next shipment to Leavenworth from Atlanta, there were five

1630 men on there who were from Chicago and friends of my friends in the prison; that they would like to be taken care of, if possible, in the way of a little better cell or facilities.

Q. And who were those men from Chicago? A. Louis Campagna and Paul DeLucia, Phil D'Andrea, Charley Gioe and Frank Diamond or Frank Maritote.

Q. That is the same name? A. The same name, the last one.

Q. Did you know of any other name for Mr. DeLucia? A. Yes, as Paul Ricca.

Q. Did they subsequently arrive at the prison? A. Yes, they did, I think in September or October, 1945.

Q. And where did you cause them—or, what, cells did they get put into? A. In a cell house. We have dormitories. They all are ten men dormitories, except the one that I was in, which was a six men dormitory on the ground floor at the next to the entrance door.

Q. And what cell were these men put in? A. Part of them were put in mine. Three of them, I believe.

1631 And, the other two were in the cell next to it.

Q. And who were the three in your cell? A. Louis Campagna and Paul DeLucia and Phil D'Andrea.

1632 Q. Were there subsequent changes in the various positions in the various cells? A. Yes. They were only there a short time until they were assigned to work and then they had to live in whatever cell house that particular assignment called for.

Q. Approximately how long did Mr. Paul DeLucia remain in the same cell as you? A. I don't remember, but a matter of four to six weeks.

Q. And subsequent to his leaving your cell, was he assigned to duties in the prison? A. Yes, he was.

Q. And what duties was he assigned to? A. Well, to the best of my recollection, he was a cell house keeper.

Q. And did you have conversations with him while he was a cellmate of yours? A. Yes.

Q. Well, did you have conversations with him subsequent to the time when he was a cellmate of yours?

A. Yes.

1633 Q. Over how long a period of time? A. Over, oh, 18 months.

Q. And would you see him from time to time? A. Yes.

Q. Where would you see him? A. Mainly in the playground recreation area of the prison.

Q. And would you see Frank Diamond there also?

A. Yes, sir.

Q. And Louis Campagna? A. Yes, sir.

Q. Did you, in your position, have more freedom than the average prisoner? A. A few extra favors, in that I was able to go from one cell house to the other to call certain prisoners to the record office—mainly in cases such as that.

Q. Did you ever have a conversation with Mr. Paul DeLucia concerning his prison file? A. Yes, sir.

Q. Do you recall approximately when that was? A. In the latter part of 1945 or the early portion of 1946.

1634 Q. And where did the conversation take place?

A. On the prison playground, while walking around the track.

Q. Was anybody else present? A. Louis Campagna and Frank Diamond.

Q. And what was said about the prison file? A. Paul asked me if it were possible for me to look through his file and see what was in there and what had to be said, and if there was anything of particular interest to him that he should know.

Q. And what did you say to him? A. I told him that it was possible for me to look through it, yes, that I could get the jacket.

Q. And did you do that? A. Yes, I did.

Q. Did you have a subsequent conversation with him about it? A. Yes, sir.

A. And did you take the file out of the office? A. Later, yes, sir.

Q. Relating to that conversation, did you have a conversation with Mr. DeLucia personally about it?

1635 A. I am not sure about it, sir.

Q. Did Mr. DeLucia ask you to take the file out so he could look at it? A. Yes, sir.

Q. And did you do that? A. Yes, sir.

Q. And how did you convey it to him, if you did convey it to him? A. I took a portion of it to him, put it under my jacket, carried it out to the yard, transferred it to him and I took another portion of this jacket and put it under his bunk in his cell in his dormitory.

Q. How long did those files remain out of your possession? A. Overnight.

Q. And did you retrieve them the following day? A. Yes, sir.

Q. How did you do that? A. I picked them up from underneath his bunk and returned them myself to the file.

1636 Q. Did you do any other favors for Paul DeLucia while the two of you were in the penitentiary in Leavenworth? A. Well, on occasions I checked on any incoming correspondence from any officials and I prepared a couple of letters.

Q. And during the course of conversations with Paul DeLucia was the name Joseph Bulger ever mentioned?

A. Yes, sir.

Q. Was Joseph Bulger identified to you by Mr. DeLucia? A. Yes, sir.

Q. And how did he identify him to you? A. As an attorney who had represented him in legal matters.

Q. And was the name Joe or Tony Accardo mentioned in any conversations with Paul DeLucia? A. Yes.

1637 Q. Did Mr. DeLucia identify him to you? A. He identified Joe Accardo as a personal friend and business associate and also that he was known as Joe Batters.

1638 Q. Did he tell you where he lived? A. Yes, sir, in the River Forest or Oak Park area.

Q. Was the name Francis Curry ever mentioned in conversation with DeLucia? A. Yes, sir.

Q. Did Mr. DeLucia identify Francis Curry to you? A. Yes, sir.

Q. How did he identify him? A. Also as a friend and a manager of either an estate or a farm.

Q. Belonging to whom? A. To Paul Ricca, and also as a business associate.

Q. Any thing else about his business? A. It was mentioned from time to time that Mr. Curry was in the either coin machine or slot machine business in Will County.

Q. Will County, Illinois? A. Yes, sir.

Q. Do you recall any conversations where the names of all three of these men were mentioned? A. I

1639 remember in one instance in the early part of 1946 while walking on the playground with Frank Diamond and Louis Campagna and Paul Ricca, where Paul stated that he was quite disturbed about the fact that the latter part of 1945 Francis or Frank Curry had visited him at Leavenworth, and that he had asked him not to make further visits, and also that Joe or Tony Accardo was at that time making visits to him under the name of Joe Bulger, and that there seemed to be some difference of opinion between Joe Accardo and Francis Curry in their business relations, and that he wished they would use some other method than trying to visit him under such conditions and trying to settle their differences of opinion.

Q. Was anything said about what the nature of the business was? A. The business was, as I stated before, either coin machines or slot machines.

Q. Was there anything said about Mr. Paul DeLucia's interest in the business? A. No, sir.

Q. Nothing directly? A. No, sir.

1640 Q. Was there anything said about why these men were visiting him? A. Other than the fact that there was some difference of opinion in the way Mr. Ricca's interests were being handled.

1885 LAWRENCE J. MILLER, testified:

Direct Examination

By Mr. Barnett:

I am referee in bankruptcy. I was an Assistant United States Attorney 1939 to 1952. I examined Paul DeLucia as a witness before the Grand Jury in November 1947 and the proceedings were transcribed in Government Exhibit No. 214.

1894 By Mr. Barnett: Now I will ask the questions which were asked by Mr. Miller, and Mr. Green will give the responses of Mr. DeLucia.

"Q. Will you state your name, please? A. Paul DeLucia.

Q. Where do you live, Mr. DeLucia? A. 812 Lathrop Avenue, River Forest.

Q. Are you known by any other name? A. Yes. Paul Ricca or Paul Salvi sometime, maybe something

1895 else.

Q. Your name is DeLucia? A. Yes, sir."

By Mr. Barnett: Turn to page 56, please.

By Mr. Green: Yes, sir.

"Q. When did you first go to the penitentiary, Mr. DeLucia? A. You mean when we got in Atlanta?

Q. Yes. A. I think it was around April the 4th, 1944.

Q. April 4, 1944? A. April 4th, if I remember; around that somewhere.

Q. Do you recall approximately the date that you went into Leavenworth? A. It was sometime in August. I don't remember the date.

Q. Of 1945? A. Of 1945, I think, yes."

By Mr. Barnett: Turn to page 57:

"During your stay at Leavenworth from August of 1945 up to August of 1947 you were permitted to have visitors, were you not? A. Yes, sir.

1896 Q. Aside from your family did you have any other visitors during that period? A. Yes.

Q. And who were those visitors? A. Well, there was a lawyer, Joe Accardo, Francis Curry, some government man, and maybe somebody else. I don't remember."

By Mr. Barnett: Turn to page 58:

1897 Q. How many times during the course of the period from August 1945 until August 1947 did Mr. Accardo visit you? A. About five or six times.

Q. Was he always alone or was he with someone?

A. No, with Mr. Bernstein.

Q. He came with Mr. Bernstein? A. Yes.

Q. On each occasion? A. Every occasion.

Q. What business were you discussing, Mr. DeLucia?

A. About my income tax, about the income tax, my income tax case.

Q. That was the current problem, was it? A. That is right.

Q. And they were discussing that with you? A. That is right."

By Mr. Barnett: Turning to page 60:

"Q. And in what capacity was Mr. Tony Accardo employed with reference to your income tax? A. I don't know how he was employed, what you call that. He just

came up there as a friend, I mean with the lawyer,
1898 because when my tax case started I was in Atlanta
and I don't know Bernstein. Therefore, I didn't trust him. When he came over, I said, 'I don't know you.' He started to talk about a figure and I said, 'I don't know you. I don't want to pay anything. I feel I don't owe the Government anything.' So we had quite some time with Bernstein.

Q. That was while you were in Atlanta? A. In Atlanta, yes. So he came there a couple of times.

Q. Go ahead with your story, Mr. DeLucia. A. When I was moved to Leavenworth he came up with Joe or with Tony and Tony make me understand that I should not be hostile with Mr. Bernstein, that he was trying to settle my case and was doing the best he could, so if I explained my things he would go ahead. My point with Bernstein was I didn't owe the Government anything, I wasn't guilty of the charge I was found guilty on anyhow. I was arguing that point, I didn't want to pay anything. So little by little he convinced me to go along and he reported on the progress of the dealing with the Government officer
and then came the time when I was supposed to pay
1899 the penalty, whatever it was, and I told him to sell
my farm, I didn't have the money to pay it and all that and he went back. The farm was mortgaged and there was a lien on it and it couldn't be sold and all that stuff and all that kind of work. That was all.

Q. And that was the reason for his visits and that is what you discussed? A. Yes, the general discussion.

By Mr. Barnett: Turn to page 62.

Q. Do you know a man by the name of Bulger, Joe Bulger? A. Yes.

Q. Did he ever represent you? A. He was in our trial in New York. He was representing D'Andrea and Maritote.

Q. He did not represent you in that trial? A. No, but he takes care of my insurance and all that. He lives in Melrose Park.

Q. He lives in Melrose Park and you live in River Forest? A. Yes.

Q. You are neighbors? A. Yes.

1900 Q. Have you known him for some time? A. Yes, for quite some time.

Q. Is his name Joe Bulger? A. Joe, yes.

Q. Did he ever visit you at the penitentiary in Leavenworth? A. No."

By Mr. Barnett: Turn to page 70, the very bottom of the page.

"Q. In other words, if the records at the penitentiary reflect that Mr. Bernstein was a visitor of yours on these various dates, September 4, 1945, October 18, 1945, December 6, 1945, January 15, 1946, April 29, 1946, November 6, 1946, March 6, 1947, May 8, 1947 and June 23, 1947, would you say that was about right? A. Yes."

1901 By Mr. Barnett: Reading one more question:

"Q. That is a total of nine visits during that two year period. A. That is right."

By Mr. Barnett: Page 76:

This question is put by Mr. Kerner, who, at that time, was United States Attorney.

"Mr. Kerner:

"Q. Mr. DeLucia, how much money did you pay the Federal Government to settle your income? A. About $60,000, $55,000, something like that.

Q. And that is all settled, as I understand it, with the Government, is that correct? A. It is all settled.

Q. And that was paid previous to your release last August? A. That is right.

Q. About when was that paid, do you remember?

A. I would say about ten months or a year before I went out, I don't recall it, or maybe eight months, something like that.

1902 Q. Where did you get the money to pay off that income tax payment? A. I haven't found out yet.

Q. I have asked a question. A. I haven't found out yet.

Q. Where did you get the money to pay that income tax? A. I say I haven't found that out yet.

Q. Did you pay it from your own funds? A. No, sir.

Q. Earlier in your testimony you stated that you had arranged to sell your farm to pay off your income tax, is that correct? A. That is right.

Q. Do you remember that? A. That is right.

Q. And that is one of the matters that you discussed or were discussing with Attorney Bernstein, is that correct? A. Yes.

Q. Did you sell the farm to pay that income tax?

A. No, it couldn't be sold. It had a big mortgage on and a big lien on from the Government.

Q. You did not sell the farm to pay that? A. No.

1903 That was just talk that I had with the lawyer.

Q. No, did you sell your farm to pay the income tax? A. No, sir.

Q. Where did the money come from to pay that income tax? A. I haven't found that out yet. I understand some friends of mine put up that money to pay the income tax.

Q. Where did they get the money to pay it, Mr. DeLucia? A. I couldn't tell you. I don't know.

Q. Did anyone tell you that? A. No. I heard that the money was brought up to Bernstein, that is all.

Q. Did Mr. Bernstein tell you that he collected the money there at his office to pay this income tax? A. Yes, that they brought the money up there.

Q. Who is 'they'? A. He said he didn't know.

Q. Did he collect it himself? A. How?

1904 Q. Did Mr. Bernstein collect it himself? A. I don't know if he collected it or it was left. I don't know what happened. I don't know.

Q. Then all of this fifty-five or sixty thousand dollars which was paid the Internal Revenue Department was paid by people who are unknown to you, is that right? A. So far, yes. Eventually I will know who they are and I will pay them.

Q. Since you have been out on parole has anyone spoken to you about any payments that they have made?

A. No, because there has been a lot of excitement over this parole and I have been kept at the farm most of the time and I haven't had a chance to see many people.

Q. Has anyone called you out there to discuss the fact that they paid any money for you? A. No.

Q. No telephone calls of any sort? A. About what?

1905 Q. About the money that was paid for this income tax at Attorney Bernstein's office. A. No.

Q. And you say you don't know up to today who paid that money? A. No.

Q. Attorney Bernstein has never even mentioned the names of any people who might have brought that money in? A. No.

Q. Is your answer 'No', is that correct? A. No. All I know is what he told the committee.

Q. And what did he tell you? A. That is what he told me, what he told the committee.

Q. Well, I wasn't at the committee, Mr. DeLucia. I don't know. A. Well, he said a few people came up there and put the money up and that was the end of it. He left them a receipt.

Q. He did give them a receipt? A. That is what he said.

Q. And no one has ever shown you any of those 1906 receipts? A. Not so far."

By Mr. Barnett: Page 88, and the question is by the Foreman of the Grand Jury:

"The Foreman: You made the statement before that you know Joseph Bulger very intimately.

The Witness: Yes.

The Foreman: So you would know whether he visited you or not.

The Witness: Joe Bulger?

The Foreman: Yes.

The Witness: Joe Bulger never visited me."

By Mr. Barnett: We are now turning to the copy of Government's Exhibit No. 215, your Honor. Exhibit No. 215 is the grand jury testimony of January 13, 1948. The one we just finished reading is Government's Exhibit No. 214.

As I say, the volume from which I am about to read is a proceeding of the Federal Grand Jury in this building, on January 13, 1948.

1907 "PAUL DE LUCIA, was thereupon recalled as a witness by the Grand Jury and having been previously duly sworn, was examined and testified further as follows:"

By Mr. Barnett: The questions are put by Mr. Kerner and the answers by Mr. DeLucia.

"Mr. Kerner: Q. What is your name? A. Paul DeLucia.

Q. Will you speak up a little, Mr. DeLucia, so the jurors can hear you? And where do you live? A. 812 Lathrop Avenue, River Forest.

Q. And are you the same Paul DeLucia who appeared before this grand jury previously? A. Yes, sir.

Q. And you were sworn at that time? A. Yes, sir.

Q. And you understand that you are still under oath?

A. Yes, sir."

By Mr. Barnett: Turn to page 916, please, at the bottom of the page:

"Q. Who is Dominick Sibillano? A. A furniture man.

1908 Q. How long have you known him? A. Quite a while.

Q. How long is quite a while? A. Fifteen, twenty years. I bought furniture from him and everything else."

By Mr. Barnett: Page 919.

"Q. Who is Francis Curry? A. A good friend of mine."

By Mr. Barnett: Pick up at the bottom of page 920:

"Q. How well do you know Francis Curry? A. Well, I know him well enough to call him a friend of mine.

Q. You know him well enough to let him run your farm while you were away, isn't that right? A. I rented it to him, yes.

Q. He actually ran your farm while you were away?

A. I rented the farm.

Q. You don't know what his business is? A. I told you he is in the farming business himself.

Q. And that is the only business he has ever had?

A. That is what I know.

1909 Q. As a matter of fact, the police chief in Kendall County there tells us that he is a slot machine operator. Is that right? A. He might be right.

Q. As a matter of fact he is right, isn't he? A. Is he?

Q. I am asking you. A. I don't know."

1910 By Mr. Barnett: Page 924:

"Q. That is right. When you were here last time we asked you whether you know any of the people who paid any of this money to Mr. Bernstein for this income tax. A. Yes.

Q. And what was your answer to that? A. I said I did not. I said I didn't know.

Q. Do you know now? A. No.

Q. And no one has come to see you since that time—

A. Not yet.

Q. —and say they needed some of the money they paid out for you? A. No, sir.

Q. What business interests did you have while you were away in the penitentiary? A. None whatsoever.

Q. Well, you had a farm, didn't you? A. Outside of the farm.

Q. Well, that is a business interest, isn't it? A. Well, I didn't make no money off the farm.

Q. What was your business before you went to 1911 the penitentiary? A. Gambling.

Q. Did you have any interest in any books?

A. No, none.

Q. Any gambling house? A. No, sir."

By Mr. Barnett: Page 927:

"Q. Suppose you tell us now what Tony really came down to see you about. A. I told you why he came down last time.

Q. Why did he come? A. He came to help a friend.

Q. Help you in what way? A. In my trouble with the income tax.

Q. Well, how could he help? A. Well, because I don't know much of Bernstein at all and that was one reason. The other reason was the fact that I didn't owe the Government any money and the man tried to help me and make me see the light on things, like, 'You were found

guilty. You have got to pay it, there is nothing to say,' and all of that stuff and a man gets indicted for doing that.

Q. How long did it take him to make you see the 1912 light? A. Well, it took—I was always in a moody—

I was always moody on those things because I figured I didn't owe the Government any money and I didn't want to pay it and all that stuff. How long it took me to see the light wasn't the idea. It was a question of years all the time, like selling the farm and then he would even think of the liens and then the mortgage. You know, those things take time, to straighten those things out, and Bernstein was saying, 'You have got to pay this money.' I didn't get along well with Bernstein because he was always saying, I have got to pay this money and make a settlement and all that."

By Mr. Barnett: Page 937:

"Q. Well, haven't you had to pay Mr. Bernstein?

A. Why not?

Q. Well, the question was if you have. You say you have not? A. He got the money, yes. I am still not through with the guy. I have got to pay him.

Q. Where did he get the money? A. Well, he got a thousand dollars from my wife.

Q. That won't be enough to pay Mr. Bernstein?

1913 A. I think I give him $500 more. I don't remember, I am not so sure. I will look in my papers if I gave him $500 or more."

By Mr. Barnett: The next question was by Mr. Ryan, who, at that time, was Assistant United States Attorney.

"Mr. Ryan:

"Q. You have told us practically all the reasons why you had to have Accardo down there; you have told us a few of the reasons why you had to have Accardo down there. A. There is no other reason.

Q. All right. The first reason is because you did not trust Bernstein and on the first time that Tony Accardo came down there he told you that Bernstein was all right and he was trying to help you and to do what he said, and after that you had confidence in Bernstein, there was nothing further. A. No, I never had confidence in Mr. Bernstein at any time."

By Mr. Barnett: That is the end of the transcript.

VOL.

III

No. 745

FILED
MAR 3 1959
JAMES P. BRENNING, Clerk

No. 12399

In the

United States Court of Appeals

For the Seventh Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PAUL DE LUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable
Julius H. Miner,
District Judge.

Appendix for Defendant-Appellant

IN THREE VOLUMES

Volume III—Pages 501 to 683

Index in Vol. I

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Appendix for Defendant - Appellant

IN THREE VOLUMES

Volume III—Pages 501 to 683

Index in Vol. I

RICHARD O'HANLON, testified:

Direct Examination

By Mr. Barnett:

1914 Q. What is your occupation?

A. Assistant Director, Intelligence Division, Internal Revenue Service.

Q. How long have you been employed by the Internal Revenue Service?

A. Since 1945.

Q. During the year 1950, how were you employed by the Internal Revenue Service?

A. I was a special agent in the Chicago Office of the Intelligence Division.

Q. Assigned to the Chicago Office?

A. Yes.

1915 Q. Did you interrogate Mr. Paul DeLucia on October 23, 1950, in your official capacity?

A. I did.

Q. And in what connection was that?

A. In connection with a gift tax investigation that I was making of Mr. DeLucia.

Q. Will you speak up a little bit?

A. In connection with a gift tax investigation which I was making with respect to Mr. DeLucia.

Q. And what was the gift tax you were referring to?

A. It related to the payment by Mr. Bernstein to the Government of approximately $55,000.00 which represented the tax deficiency and interest in connection with Mr. DeLucia's tax liabilities for the years 1935 through 1941 in a settlement thereof.

Q. Where did you interrogate Mr. DeLucia?

A. In the office of the Intelligence Division at 105 West Monroe Street.

Q. And who was present at the interrogation?

A. Mr. DeLucia, Mr. Bernstein, myself and Mrs. Northrop, stenographer.

1916 By Mr. Stewart: Your Honor, as I understand it, this negotiation led to another settlement which was made and approved by the Tax Court, so, under those circumstances, I don't think that what was said leading up to the settlement should be shown because the settlement takes care of it all.

By Mr. Barnett: The settlement of what, Mr. Stewart?

By Mr. Stewart: This gift tax that they levied against Paul DeLucia. It is my understanding and I suppose your Honor has had it more often in civil matters; it doesn't arise in criminal cases often—it is my understanding a settlement consummates the matter.

By The Court: I would rather not comment on what the purpose of it is. I will let him answer.

By Mr. Green: May the record show the same objection with respect to the defendant Bulger, your Honor.

By the Court: The same ruling.

1917 By Mr. Barnett:

Q. Was the meeting transcribed?

A. It was.

1919 By Mr. Barnett: I am reading from Government Exhibit 217:

"Testimony of Mr. Paul DeLucia, taken in the office of the Intelligence Division Unit, Bureau of Internal Revenue, Room 1020, 105 West Monroe Street, Chicago, Illinois, on October 23, 1950, at 11:15 a.m., in the matter of his tax liability to the United States.

"Present: Paul DeLucia, taxpayer.
Eugene Bernstein, attorney.
Richard L. O'Hanlon, special agent.
Violet J. Northrop, recorder."

"Questions were asked by Special Agent O'Hanlon and answers were made by Mr. DeLucia, unless otherwise indicated."

"Q. Will you please stand and raise your right hand? Do you solemnly swear the testimony you are about to

give will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

1920 Q. What is your full name?

A. Paul DeLucia.

Q. Your address?

A. 812 Lathrop Avenue, River Forest, Illinois.

Q. When you discussed with Mr. Bernstein the matter of settling your income tax liabilities for the years 1935 through 1941, did you also discuss with him how the money would be obtained to pay the tax deficiencies and interest?

A. Yes. I told him I had a farm to sell; that was all. If the farm could be sold, that was all. Then he came back and said the farm was mortgaged and that couldn't be done.

Q. Prior to the payment of your tax deficiencies and interest by Mr. Bernstein on October 11, 1946, did he advise you of the total amount to be paid?

A. No.

Q. Did you mention or discuss with anyone other than Mr. Bernstein where and how you would obtain the money to pay the tax deficiencies and interest in connection with your tax liabilities for the years 1935 through 1941?

A. No.

1921 Q. Did Mr. Bernstein ever inform you of the amount paid by him in settlement of your tax deficiencies and interest for the years 1935 through 1941?

A. Yes.

Q. When did he tell you?

A. I think he came over after one of the visits to the penitentiary and said that everything was settled and paid.

Q. Did he tell you how much was paid?

A. Yes. I don't remember the amount, but he said everything was taken care of.

Q. Did Mr. Bernstein tell you only that it was paid, or did he also tell you the amount that was paid?

A. I remember he told me the amount. He explained how much the agreement was and that it was paid.

Q. Did Mr. Bernstein tell you how he obtained the money to make the payment?

A. He told me that there was some fellows, supposed to be friends, come up there with the money; that's all I know.

Q. When did he tell you that?

A. While we were there at Leavenworth.

1922 Q. Do you know who delivered the money to Mr. Bernstein used by him to pay your tax liabilities and interest on October 11, 1946?

A. No.

Q. Have you made any effort to find out who delivered the money to Mr. Bernstein?

A. No, I have not made any effort at all, because I don't know who to turn to, because I figure that the fellow will some day come up and tell me; then you have to take into consideration, I can't go anyplace, I can't see anybody, because I am on parole.

Q. Have you filed with the Collector of Internal Revenue Donee's or Trustee's Information Return of Gifts, Form 710?

A. No."

1923 "Q. Section 86.21, Regulations 108, relating to gift taxes under the Internal Revenue Code, states that an information return or notice on Form 710 must be filed by every donee of a gift in excess of $3,000.00 on or before the 15th day of March following the close of the calendar year in which the transfer was made. What is the reason for your not filing with the Collector of Internal Revenue Form 710 reporting the receipt of the money delivered to Mr. Bernstein for you, as gifts?

A. First of all I think I was still in jail; and second, I didn't consider it as a gift. I figured that some day I would have to pay it.

Q. Why do you feel that you will have to repay this money when nobody has claimed or stated they paid this money to you?

A. You want to know the reason why nobody comes to see me and say they paid that money is because they don't want to put themselves in trouble because of the publicity.

I suppose when the publicity dies down a little bit 1924 and all this stuff will be over, I will have to pay it, and I will have to report it, too.

Q. Is there any further statement that you wish to make in matter?

A. No, Mr. O'Hanlon."

By Mr. Barnett:

Q. Mr. O'Hanlon, at the conclusion of the question and answer statement, did you have any further conversations with Mr. DeLucia or Mr. Bernstein?

A. I did.

Q. At the same place?

A. At the same office, same place.

Q. What was the further conversation?

A. After the statement was completed, I said to Mr. DeLucia, "You said that you would have to sell your farm in order to pay the tax deficiencies and interest as that is all that you had. So if you had no money, how did your wife live while you were in the penitentiary?"

Mr. DeLucia answered, "She had to live off the farm."

1925 *Cross Examination*

By Mr. Stewart:

Q. Mr. O'Hanlon, I would like to ask you a few questions to explain to the jury, through you as an expert, something about this gift tax situation, what the law and the regulations are.

As I understand it, as a revenue agent you were taking the position that this money that was paid into Mr. Bernstein's office and then later paid by Mr. Bernstein to the Revenue Collector, that that constituted a gift to Paul DeLucia.

Was that your position?

A. I was not the revenue agent. I was the special agent in the case.

Q. You were with Intelligence?

A. That is correct.

Q. I don't believe we have developed that yet. The revenue agent is one who is looking for money alone, isn't that right? I mean, he goes around and questions taxpayers and audits books, and his functions wind up, if there is any litigation, in the Tax Court, isn't that right?

A. His functions relate to the technical phases and audit phases of the case.

1926 Q. And through him, cases are settled by having the taxpayer pay some additional money, if that be the case?

A. Well, he audits the returns.

Q. Then if the Revenue agent finds circumstances which cause him to suspect that there is something criminal involved or fraudulent, is that when the Intelligence Unit is called in?

A. Intelligence Unit may get into a case right from the start. They may come in at a later date, after the Revenue agent has initiated his examination.

Q. Well, to put it bluntly, the Intelligence Unit is more the police arm of the Service, is it not?

A. They are interested in the fraud aspects of cases.

Q. Yes. Had a Revenue agent been on this particular case before you were assigned to it?

A. He had not.

Q. October 26, 1950, reading off this, is the date you were testifying to concerning this statement?

1927 A. That is correct.

Q. How long had you had the case up to that time?

A. I wouldn't recall exactly. Probably a month or so.

Q. After you finished with Mr. DeLucia, did you make out a report for your office or your superiors?

A. There were other taxpayers involved in addition to DeLucia.

Q. Did you make a report covering them all?

A. I did.

Q. Do you have that with you?

A. I do not.

Q. Now you correct me if I have this wrong. I am going to try to shorten it up a little bit, concerning what you were driving at.

You were taking the position, if I understand it correctly, that because somebody went into Mr. Bernstein's office and paid this large sum of money, $55,000 or something like that, that that constituted a gift from those persons who paid that money, wasn't that your position?

A. For tax purposes, yes.

Q. Now in a general way, what is the law and the
1928 regulation where a person makes a gift to another? Who incurs the tax?

A. My recollection is that the primary liability is on the donor of the gift, but that if the donor does not pay, then the donee is liable for the tax.

Q. Just to put that in another way, the donor is the one that is giving the money and the donee is the one that is receiving the money?

A. That is correct.

Q. In the ordinary course of events, the Revenue Department looks to the man who gave the gift to pay a tax on what he gave to somebody else, isn't that right?

A. The Revenue Department is interested in collecting the tax on it. As I mentioned before, the person who gives has the primary responsibility and the person who receives must pay if the person who gives does not.

Q. Well, we will take it one step at a time.

If the person who gives the money as a gift pays the tax as required by the regulations and the law, then
1929 the person who receives the money gets it free of any tax, isn't that true?

A. That would be correct.

Q. Then if something happens to the man who gave the gift, if he went into bankruptcy or died or you couldn't find him, or something, then you look to the man who received the money, isn't that right?

A. You would have to if you can't find him because that was the situation.

Q. I am just getting before the jury in my own clumsy way how this works.

Now Mr. DeLucia told you that it wasn't a gift at all; that these people, he understood they were putting up this money because they wanted to help him out of his trouble and he expected to pay it back later.

If that were the fact, it wouldn't be a gift, would it?

A. I don't think that that was the fact. That is not my recollection.

1930 Q. I know you made that decision, but was that your decision to make?

A. I was basing my action on the basis of his statements.

Q. But was the responsibility yours in the performance of your duty to make the decision as to whether it was a gift or a loan?

A. No, my responsibility was to make a recommendation.

Q. Did you in your report make a recommendation that this be regarded as a gift?

A. I did.

Q. In that report, did you put in there the claim of the taxpayer that it wasn't a gift at all, it was just a loan?

A. I included in my report the taxpayer's statement that in his opinion it was not a gift; that it was a loan because some day he thought he might have to repay it.

Q. Was your recommendation adopted by your superiors or somebody, whoever had that duty, to either adopt or reject your report?

A. Apparently it was adopted.

Q. If it had not been adopted, it would have been
1931 sent back to you again, wouldn't it?

A. Well, if it had not been accepted, I would probably have gotten the case back again or at least it would not have been collected.

Q. Do you know enough about what happened from your records and files, what you may have heard around your office, to put it briefly,—this whole thing wound up in a ninety-day letter, did it not, being sent to the taxpayer?

A. I don't know just what took place. I didn't follow the case after I submitted the report except I was at the Tax Court when the hearing was to come up in connection with the gift tax matter.

Q. Well, these cases, that is how they get in the Tax Court. The ninety-day letter is a preliminary step, is it not?

A. Normally.

Q. Do you remember the amount that the Government claimed as the tax?

A. The amount of tax due from Mr. DeLucia?

Q. Yes.

A. The tax and penalties, I believe, ran around $12,000.00.

1932 Q. And that was paid through a settlement made through Mr. Bernstein, the attorney, and O. K.'d by the Tax Court, wasn't it?

A. That I don't know. I understand it has been paid.

Q. When Mr. DeLucia was up in your office there and you were taking this statement from him, you have already said other things were said that don't appear in the statement. That is true, isn't it?

A. There was some general conversation.

Q. Did you learn from Mr. DeLucia or did you learn from other sources that Mr. DeLucia was on parole at the time that he was up in your office, at the time this statement was taken on October 23, 1950?

A. Yes, Mr. DeLucia told me he was on parole. It is in the statement, I believe.

Q. Yes, and did Mr. DeLucia tell you that the reason why he didn't make further inquiry trying to find out who these people were who loaned the money and put it up for him was that he was afraid he might get into trouble with his parole authorities if he associated with people
1933 that they didn't approve of or something along that line?

A. He made the statement that is in there that he couldn't see anybody or go any place because he was on parole.

Q. You know enough about that situation to know that it is one of the regulations of parole that a man who is on parole has to be careful who he contacts or associates with, isn't that true?

A. I wouldn't know.

Q. But you didn't have any reason to dispute what Mr. DeLucia told you there, did you?

A. I had no reason to go into the question of parole at all.

Q. It is true that this entire matter was settled by the payment of money?

A. I understand gift tax and penalties were paid.
1934 By Mr. Barnett: Now we are at the point of Mr. Kefauver's hearing, your Honor. I have here a certified and exemplified copy of the hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, Second Session and 82nd Congress, First Session.

This is Part 5 of the hearings conducted in Illinois on September 9; October 5, 6, 7, 17, 18, 19; December 18, 19, 20, 1950; January 5, 19, 1951.

This book has been marked Government Exhibit 216.

Your Honor, we offer in evidence certain portions of Mr. DeLucia's testimony before that Commmittee, which

I would like permission to read now with Mr. Green.

• • •

1966 Senator Wiley: This book indicates your income since you came out of prison?

Mr. De Lucia: Yes.

Senator Wiley: You were paroled, were you not?

Mr. De Lucia: Yes.

Senator Wiley: And that is your only source of income, that which you have enumerated here?

Mr. De Lucia: Yes.

Senator Wiley: From your farm and from your stock?

Mr. De Lucia: Yes, sir.

Senator Wiley: Any other sources?

Mr. De Lucia: No, sir.

Senator Wiley: And from the time you made all the improvements on these investments since 1947?

Mr. De Lucia: No, I put the money in there.

Senator Wiley: You had some money when you went to the penitentiary?

Mr. De Lucia: Yes.

Senator Wiley: How much did you have when you went to the penitentiary?

Mr. De Lucia: $300,000.

2050 MATTHEW SZWED, testified:

Direct Examination

By Mr. Barnett:

Q. You are the same Matthew Szwed that testified here earlier today? A. Yes, sir.

Q. And you are an official of the District Director's Office of the Internal Revenue Service of Chicago, Illinois? A. Yes, sir.

Q. Mr. Szwed, I hand you Government Exhibit Nos. 218, 219, 220, 221 and 222, being the 1951, 1952, 1953, 1954 and 1955 returns, respectively, of Paul DeLucia, and 2051 ask you if those documents were filed in your office in

Chicago, Illinois in the normal course of business?

A. Yes, sir, they were all filed in the District Director's Office or the Collector's.

By Mr. Barnett: I assume there is no objection as to the foundation?

By Mr. Stewart: Oh, no, not about that. I am just wondering about the materiality.

By Mr. Barnett: I will make my offer then and explain the materiality.

By Mr. Stewart: Suppose you give us some idea of what your theory is on which you offer these?

By Mr. Barnett: I will.

Your Honor, I am offering these returns for the limited purpose—

By The Court: Will you repeat the years? I have lost track of them.

By Mr. Barnett: Yes: 1951, 1952, 1953, 1954, and 1955.

I am offering these returns for the limited purpose of establishing potential source of income during the 2052 years 1948, 1949 and 1950, the theory being this: That up to and including the year 1943, Mr. DeLucia reported income under the caption of "Miscellaneous," which he has subsequently identified as being from gambling interests.

During 1945, 1946, 1947, 1948, 1949 and 1950, during those years on his returns, he shows no income of a miscellaneous nature.

Furthermore, during the years 1951, 1952 and 1953, his returns show no income of a miscellaneous nature.

In 1954, the evidence in the court room shows that he was released from his parole. His parole ended. So then, for the first time, again in 1954, his return shows "Miscellaneous" income in the amount of $76,000—pardon me—it says "Personal wagering at tracks, et cetera, $76,512."

The 1955 return shows "Personal wagering at tracks, et cetera, $86,000."

2053 The 1956 return has already been offered for the purpose of establishing costs on the house at Long Beach, Indiana, and I would like to offer the "Miscellaneous" income shown on that return as part of this pattern of proof also.

As far as the legal argument, your Honor, I am prepared to support this as far as the cases are concerned.

2054 By Mr. Stewart: The jury has heard it now. It would be pretty hard to erase it from their minds.

By The Court: Yes. I was going to say in fairness to the nature of the objection that an inference as to the earnings of a subsequent year might not be a proper inference before the jury.

By Mr. Barnett: Your Honor, I have cases to support that.

By The Court: I will reserve my ruling. I will hear it.

By Mr. Barnett: Do you want to hear argument on it now?

By The Court: Are you insisting on your objection?

By Mr. Stewart: I don't want to hear any legal argument. I want to get along with the case, and now that the jury—

By The Court: They may be received in evidence.

2055 By Mr. Barnett: Your Honor, I would like to read Stipulation No. 32:

It is further stipulated and agreed that Paul DeLucia reported and actually expended the following sums of money, as shown on his monthly report parole Form 24, during the year 1948:

In January, $5,205.69, in February, $4,000.00, in 2056 March, $8900.00, in April, $27,933.49, in May, $30,869.87, in June, $24,088.07, in July, $20,287.81, in August, $13,437.53, in September, $24,565.18, in October, $21,057.19, in November, $16,406.23, in December, $20,356.31. Total of $217,107.37.

2057 Details of these expenditures are contained in Parole Form No. 24, Government Exhibit 52, which is a digest of Government Exhibits 5-A through 5-M, the monthly parole reports themselves.

Stipulation No. 33:

It is further stipulated and agreed that Paul DeLucia reported and actually expended the following sums of money, as shown on his monthly reports Parole Form 24, during the year 1949:

In the month of January, $15,939.12, February, $5,239.50, March, $10,101.40, April, $13,463.27, May, $11,000.44, June, $8,904.77, July, $11,428.15, August, $7,095.89, September, $5,627.14, October, $7,790.03, November, $11,530.70, December, $12,812.73.

2058 Total, $120,933.14.

Details of the above expenditures are contained in Government Exhibit No. 53, which is a digest of the parole reports themselves, being Government Exhibits Nos. 6-A through 6-L.

Stipulation No. 34:

It is further stipulated and agreed that Paul DeLucia reported and actually expended the following sums of money as shown on his monthly reports, Parole Form No. 24, during the year 1950:

January, $5,222.09, February, $11,932.06, March, $14,755.39, April, $9,361.60, May, $12,254.44, June, $11,847.69, July, $16,552.76, August, $11,621.77, September, $3,958.84, October, $4,174.06, November, $5,414.07, December, $11,675.99.

2059 Total, $118,770.76.

Details of these expenditures are contained in Government Exhibit No. 54, which is a digest of the parole reports themselves for the year 1950, which are Government Exhibits Nos. 7-A through 7-L.

2060 Your Honor, I believe that the admission of these exhibits is agreed upon, but we haven't had a formal

ruling on the offer, so I am offering Government's Exhibits 52, 53 and 54, which are summaries or digests of the parole reports, together with the parole reports themselves, which are Exhibit Nos. 5-A through 5-M pertaining to the year 1948; 6-A through 6-L pertaining to the year 1949; and 7-A through 7-L pertaining to the year 1950.

By The Court: Subject to the regular Bulger objection, and if there is no further objection from Mr. DeLucia's counsel, they may be received in evidence.

THADDEUS WILCZAK, testified as follows:

2068 *Direct Examination*

By Mr. Barnett:

Q. What is your occupation? A. Electrical contractor.

Q. Are you in business for yourself? A. Yes, sir.

Q. How long have you been so engaged? A. It is since 1951.

Q. Are you a graduate of any university, school, or college? A. Illinois Institute of Technology.

2069 Q. Have you worked at any trade? A. Yes, I worked as an electrician.

Q. What degree do you have from the Illinois Institute of Technology? A. Bachelor of Science, Electrical Engineering.

Q. Now, during the years 1948, '49, and 1950, how were you employed? A. I was employed as the general manager of the Northwest Electric Company.

Q. Who was the owner of the Northwest Electric Company? A. Alex Ponzio.

Q. Do you know the defendant Paul DeLucia? A. Yes, I do.

Q. Is Alex Ponzio any relation to Paul DeLucia? A. That is his father-in-law.

Q. When you started working for the Northwest Electric, when was that? A. That was 1948, about May.

2070 Q. What was the first job you undertook while you were employed by Northwest? A. At Sportsman Park.

Q. Is that a race track? A. Yes, sir.

Q. What was the job you did there? A. Wiring the ticket booths.

2071 Q. What was your part in this job? A. Well, I was laying it out and seeing that the job would be done right.

Q. And how long did it take to complete the job? A. Well, it had started prior to the time I had gone there. It would be about a month after, since I had been with the company, at that time.

Q. Well, how long did it take after you got there, how long did it take you to complete the job? A. About a month.

Q. And approximately how many times were you on the premises at Sportsman's Park during that month? A. About six times.

Q. Was that for the purpose of supervising the work? A. Yes.

Q. Were you introduced to any of the officials at Sportsman's Park while you were out there? A. Yes.

Q. Who did you meet? A. Mr. Bennett and Mr. Johnson.

2072 Q. Do you know Mr. Bennett's first name? A. Hugo.

Q. Do you know Mr. Johnson's first name? A. William.

Q. Who introduced you to these people? A. Alex Ponzio.

Q. How many times did you see them while you were out there? A. Well, the first time I met the both of them and on other occasions it may have been one or the other that I would see.

Q. On every occasion that you were out there did you see one or the other? A. Yes.

Q. When did you first meet Paul DeLucia? A. I first met him in Lisbon, Illinois, on the farm that he had out there.

Q. Was that shortly after this job at Sportsman's Park? A. Yes.

2073 Q. Will you tell us how you happened to be at the farm? A. Well, Mr. Ponzio had asked me that morning to go out there because they had some generator trouble, to take a look at the motor generator set that had been out there for a standby service, so, he took me out there in his automobile.

2074 Q. And when you got to the farm, you met Mr. DeLucia? A. Yes, I did.

Q. Did you have a conversation with him? A. Yes. We had a discussion as to what was wrong with the motor generator set and as to whether or not the motor generator set would be capable for handling pump equipment for a swimming pool that would be put in in the future.

I was advising him as to whether or not it would be suitable for it, that is, the motor generator set.

Q. Was there anything said about cost? A. Yes. We mentioned there would be considerable cost in doing that installation. He just said I shouldn't worry about that end of it because there was enough money.

2075 Well, see, then there was a discussion, something about underground service. I don't know exactly what it was. Underground service and also, he had shown me some of the work that had already been done prior to the time I had been out there, like the barn that had some lighting that was put in, that was done by the Northwest Electric Company.

Of course, there were other works that were shown.

Q. Now, did you have a subsequent meeting with Paul DeLucia later that year? A. Yes. We had gone—

2076 on another occasion again Mr. Ponzio told me would have to go out to the farm because there was some other talk about some pumps and at that time I had gone with Mr. Ponzio to the farm and Mr. DeLucia had told me that he had some specifications on the some pump equipment and wanted to know just whether or not it would be suitable for its application. If I am not mistaken, that was the sump pump.

I am not exactly sure what type of pump it was or what it was for. The discussion was primarily on that pump equipment.

Q. Did you have any discussion about cost? A. Not at that time, no.

Q. That was a little later? A. A little later date, yes.

Q. In 1948? A. Yes.

Q. Did you have a subsequent meeting with Mr. DeLucia? A. Yes. Then there was another meeting again, at which time—that was on a Saturday.

Q. About when would this be? A. That would be the latter part of 1948.

2077 Q. The latter part of 1948? A. Yes.

Q. It was on a Saturday? A. It was on a Saturday and the day prior, Benny told me we would have to go out. I mean Alex Ponzio. That was his nickname, "Benny". He told me would have to go out on the farm because there was a discussion about the home that was going to be built out there. We were supposed to talk about the electric wiring on the farm.

2078 That Saturday morning he picked me up and took me out there. See, we had to ride out there. There were quite a number of people, so, we had no opportunity to talk, to discuss any part of that program, and, see, that is when we come out there then and I waited in a doorway and Benny—he went to see his father-in-law.

Q. Were there people inside the room? A. Yes, there were people in the room and also there were some people sitting on the steps. There was Mr. Hugo Bennett, Mr. Monaco, a Mr. Kelly. There was a Mr. Accardo, Mr. Paul DeLucia.

Q. Do you know what Accardo that is? A. Tony.

2079 And, see, the persons were talking, and then, finally Mr. DeLucia came to me and told me we would be unable to discuss the wiring about the new home because they were pretty busy. See, then, I went upstairs—and, I went to another room where there was some woman sitting and I just sat on a chair while Benny was taking care of his businesses with other people.

Q. How long were you on these premises? A. For quite some time.

Q. How many men did you see there? A. There must have been at least seven men.

Q. Do you know Kelly's first name? A. Tom.

Q. You mentioned Tony Accardo, Hugo Bennett. Anybody else? A. Well, there was Mr. Curry. I don't remember his first name now. Curry was out there, also.

Q. Francis Curry? A. Yes, Francis, Frank Curry.

2080 Q. And what time of the day was this? A. I know we left early in the morning. We probably got there maybe 10:00 o'clock, when we got out there. It was just before noon there or a little after noon, something around there.

Q. When did you leave there? A. Oh, we left there, it was about 5:00 o'clock, something like that.

Q. Did you have another meeting with Mr. DeLucia?

A. See, then, there was another meeting with Mr. DeLucia in the River Forest home.

Q. At Mr. DeLucia's home? A. Yes, sir, in River Forest in early part of 1949.

2081 Q. And did you go there with anybody? A. Yes, Mr. Ponzio.

Q. And who did you see at the home? A. Mr. DeLucia.

Q. And what was done or said on that occasion?

A. Well, that time we had gone down there for a lighting layout that was supposed to be in the basement, for card playing in the basement proper, and see, it was supposed to be two fixtures. There were supposed to be fixtures so there would be adequate lighting so it would be suitable for card playing.

Q. Did you lay out the lighting for that? A. Yes, sir.

2082 Q. What do you mean by laying out the lighting? You mean drawing the plans? A. Well, the fixtures were especially designed. It was not standard fixtures. You see, they were made by a fixtures manufacturer to be installed in that basement, and the fixtures had to be so designed that it had to be suitable for that particular table.

Q. How many tables? A. Two tables.

Q. Who did you see in the house on that occasion?

A. Let's see, there was Mr. Ponzio, Mr. DeLucia—I think—Mrs. DeLucia I know was there, but I don't know who else was there, that I remember.

Q. Did you have another meeting with Mr. DeLucia at the River Forest house? A. Yes.

Q. Approximately when would that have been?

A. That was a little later date when they were remodeling the entire River Forest home. That was in 1949.

Q. Did you go there with anyone? A. Mr. Ponzio.

2083 Q. What did you go to the house for this time?

A. Well, there was a lighting layout that was supposed to be in the kitchen, some exhaust fans were to be installed and some electrical work that was to be done throughout the house.

Q. Were you there for the purpose of laying the electrical work out? A. That is right.

Q. Who did you see on the premises at that time?

A. At that time there was Mr. Paul DeLucia and Mr. Tony Accardo.

Q. Were you introduced to him? A. No, I was not.

Q. Did you have any conversation with Mr. DeLucia on that occasion? A. Yes. At that time I suggested that the fixture in the kitchen should be what we call the eight foot semi fixture to provide adequate lighting in it, and then we discussed the exhaust fans, the type of exhaust fan, how it is to be installed, and then of course there
2084 were other outlets, where they were to be located, and things of that nature.

Q. Did you have a further meeting with Mr. DeLucia in the summer of 1949? A. Yes. That was the time that I had gone with Mr. Ponzio and a secretary we had, a Mrs. or Miss Marion Twardzik.

Q. Where did you go on this occasion? A. Well, the purpose was to see how the home was progressing as far as the remodeling was concerned. That was in the early part of 1950.

Q. Did you have another meeting in the late summer of 1949? A. That was regarding the electrical
2085 wiring to be done in the new home that was to be put up in Lisbon, Illinois.

Q. Where did that take place? A. River Forest.

Q. And who was present? A. Mr. Paul DeLucia and Mr. Alex Ponzio.

Q. Anybody else? A. Well, there was another person, but I don't remember who it was.

Q. What was the discussion? A. Well, the discussion was on the electrical wiring as to its layout, what was wanted in that particular home.

Q. What type of lighting did it call for in the home?

A. Well, there was parts of it, special lighting,
2086 that was supposed to be typical to the wiring and lighting in the basement that they had for card playing. Then there was also some other special lighting—I don't know—it is not too clear on that.

Q. Was there to be any lighting over the bar? A. Yes, there was supposed to be some recessed lighting, spot lighting, something like that supposed to be over the bar.

Q. Will you describe the length of the bar? A. Well, it is probably about ten feet, the bar itself.

Q. Was there any outside lighting involved?

A. Well, there is supposed to be some flood lighting for the parking area.

Q. Did you see the plans for the parking area?

A. Well, I see the plans. The entire home was shown as a plan, the way it was laid out.

Q. How large was the parking area? A. Well, I would say it had facilities for at least sixteen automobiles.

Q. These plans for the house you examined, do
2087 you know who the architect for the plans was?

A. DeFoe & Sturman.

Q. Do you know about how old Alex Ponzio was at this time? A. Oh, I think he was about twenty-five, somewhereas near there.

Q. Did you have another meeting at the River Forest house? A. Not that I can remember.

Q. I mean in 1950? A. Well, let's see. That was the time that we were talking about with Marion Twardzik and myself and Mr. Ponzio.

Q. Who was Marion Twardzik? A. That was our secretary.

2088 Q. And the three of you went to the River Forest house? A. That is right.

Q. Will you describe what you saw and what was said there? A. Well, let's see, at that time the electrical work was in progress. The vitrolite tile was being installed in the bathroom, and then there was a decorator in there doing some painting.

Q. The vitrolite that was being installed, where was it being installed? A. In the bathrooms upstairs.

Q. How about the kitchen? A. Well, see, the kitchen, the electrical work was being done in the kitchen at that time.

Q. Those were your men doing the electrical work? A. Yes, sir.

Q. Are you able to estimate the cost of the vitrolite that was being installed? A. Yes. I would say it would be approximately about $5,000, with the two bathrooms and the fixtures that were being used. I would say about $5,000, at least.

2089 Q. Were there any new bath fixtures being put in? A. Yes.

Q. Were you able to estimate the cost of that? A. When I say $5,000, I mean that is covering the two bathrooms, see, with the fixtures and vitrolite tile.

Q. Does that cover the kitchen also? A. No.

Q. How much do you estimate for the kitchen? A. The actual estimating, the decorating work and the electrical work that was being done at that time, I would say would be probably $10,000.

Q. What type of decorator work was being done?

A. Let's see, the entire rugs were being pulled out. Supposed to be some cleaned, some new. Supposed to be some furniture.

Q. Was any painting going on? A. Yes. Supposed to be some murals painted and some [illegible]ing in the home itself to blend with the color schemin[illegible]

2090 Q. In the living room, and that estimate of $10,000 for the total cost, does that include the electrical work which is being provided by your men? A. No, there was about $900 to $1,000 worth of electrical work.

Q. Who did you see in the house on that occasion?

A. Well, see, on that particular occasion, I didn't see anyone.

Q. Were you at the house on another occasion then shortly before or shortly after that? A. I may have, but I don't remember it right now.

Q. Did you see Francis Curry at the River Forest
2091 house on any occasion? A. No. Francis Curry I seen out at the farm, not the River Forest house.

Q. Did you see Tony Accardo at the River Forest home on any occasion other than the one you have related?

A. Yes, I have seen him twice at the River Forest home.

Q. What was your financial arrangement with Mr. Ponzio in the Northwest Electric? A. I was to work on a profit sharing arrangement.

Q. Did you receive a salary? A. Yes, I did.

Q. And a profit share in the business? A. Profit share in the business.

Q. What particular function of the business were you performing? A. Well, I was managing the company.

Q. Were you estimating the work, the cost on work to be done? A. Yes, I was.

2092 Q. How long were you engaged in this business, from May of 1948 until when? A. That was until 1951.

2093 Q. And on that occasion in 1951, what happened?

A. Well, see, then I purchased the business from Mr. Alex Ponzio.

Q. During the time between 1948 and 1950, what type of work was your firm doing? A. Well, we were doing some new work and also we were doing some work for all the bookies that were in the city. That was Wagon Wheel, Forest Lounge, and then we had done some work in the

Loop area. There were some bookmakers on Jackson Boulevard and Adams Street. You see, I don't remember the exact addresses.

Q. What type of work were you doing in these places?

A. Well, there was special lightings that were being done in there. Then, of course, necessary outlets and anything regarding the electrical work.

Q. How did you obtain those jobs? A. Mr. Ponzio usually came in, in the morning, and said we have a job to do and so he would take me out to it, the particular job that we would have to do, and then he asked me to make a layout of it, you see, and then I would make a layout of it, you see, and then I would make a layout and make arrangements for the men to do it.

2094 Q. How did you get paid for the jobs? A. Cash.

Q. Did you collect the money or did Ponzio?

A. On one occasion at Forest Lounge I did make the collection. On other occasions, well, two occasions, I made collections, and other times I believe it was Mr. Ponzio.

Q. Did you do any work on the Italian Old People's Home? A. Yes, we did.

Q. How did you get that job? A. Well, it was on a Saturday morning—no, it was a Friday that Mr. Ponzio asked me to go with him to his River Forest home on a Saturday morning, so that Saturday [illegible] I met Mr. Ponzio at the River Forest home. Then [illegible] in, looked in, and saw Mr. DeLucia, and at that [illegible] they called a Mr. Monaco, who came over, and this Mr. Monaco had made a telephone call, and after he made the telephone call he told us that we had the job. Then we did the

2095 work, because we were actually the third bidder on the job.

2095 ANDRES SALDANA, testified:

Direct Examination

By Mr. Barnett:

Q. Where is your residence, Mr. Saldana? A. Yonkers, New York.

Q. What is your occupation? A. I am an Internal Revenue Agent, lower Manhattan, New York City.

2096 Q. Were you assigned to duty in Chicago? A. I was.

Q. When was that? A. I came into Chicago November, 1956.

Q. Were you assigned to work on the case which is now on trial? A. I was.

Q. With respect to your background, Mr. Saldana, how long have you been an Internal Revenue Agent? A. For the last fourteen years.

Q. What type of audits have you made as an Internal Revenue Agent? A. In New York I am assigned to the fraud squad, which examines fraudulent returns of individuals, corporations and partnerships.

Q. Do you have any accounting background? A. I have.

Q. What is it, please? A. I graduated from New York University with the degree of BCS, Bachelor of Commercial Science, majored in accounting and finance.

Q. Prior to being employed by the Internal Revenue Service, how were you employed? A. I have been in the Government service twenty-four years. I was with the Home Owners Loan Corporation as an auditor before

2097 I came to the Internal Revenue Service.

Q. Well, you have been present throughout the trial of this case? A. I have.

Q. Have you listened to all of the testimony? A. I have.

Q. And have you examined the physical exhibits that have been placed in evidence? A. I have.

Q. And were you present when Mr. Paul Mahon testified regarding the computation of expenditures for the period 1934 to 1947? A. I was.

Q. And did you work with Mr. Mahon in constructing the summary of expenditures? A. I helped work with him and helped him on it.

Q. And were you present when Mr. Mahon explained his summary of cash available to Mr. DeLucia during the year ending on December 31, 1947? A. I was.

2098 Q. And did you participate with Mr. Mahon in the construction of that summary? A. I did.

Q. Now, are you familiar with all the aspects of this case on trial? A. I am.

Q. Have you prepared a computation of the income tax of the income and the tax liability of Paul DeLucia and Nancy DeLucia for the period 1948, 1949 and 1950?

A. I have.

Q. And on what is that computation based? A. On the expenditure method.

Q. Well, on what evidence is it based? A. Well, according to the testimony of—

Q. Is it based on the evidence in this trial? A. Yes, sir.

Q. You say that you computed that on the expenditure method? A. I have.

Q. For what reason did you use the expenditure method? A. Due to the fact that the testimony of Rev-

2099 enue Agents Klein, Ruggaber and Armstrong—they stated that they received information either from Mr. DeLucia or from Mr. Bernstein that Mr. DeLucia always computed his tax on the expenditure method.

Q. You mean computed his income on the expenditure method? A. His income.

Q. Now, is Government Exhibit No. 223 the computation of net income which you have prepared for the years 1948, 1949 and 1950? A. It is.

By Mr. Barnett: Your Honor, I will offer Government Exhibit No. 223. We have copies for everybody.

By Mr. Stewart: No objection.

By Mr. Green: There will be the same objection, your Honor.

By The Court: No objection, so, it may be received as to DeLucia and it may be received as to Mr. Bulger, subject to the original objection of connecting it up.

GOVERNMENT EXHIBIT No. 223
Paul & Nancy DeLucia

Computation of Net Income
For the Period 1948-1950 Inclusive

		1948		1949		1950	
Cash in Banks — December 31st:	$	$	$	$	$	$	
Northern Trust Co.		234.49			4,905.72		6,077.35
1st State Bank-Forest Park		9,416.43	9,650.92		—		—
Total Expenditures-Parole Reports		217,107.37		120,933.14		118,770.76	
Less:							
Funds Available—							
Cash on Hand 12/31/47	48,697.01						
1st State Bank-Forest Park Loan	11,000.00						
Gross Farm Receipts	30,633.81	90,330.82		70,646.79		42,548.35	
Net Expenditures			126,776.55		50,286.35		76,222.41
Total Funds to be Accounted For:			136,427.47		55,192.07		82,299.76
Less:							
Cash in Banks — January 1st:							
Northern Trust Co.			—	234.49			4,905.72
1st State Bank-Forest Park			—	9,416.43	9,650.92		—
Excess of Expenditures over Funds Available			136,427.47		45,541.15		77,394.04
Less:							
Depreciation — Allowable			3,810.84		8,938.26		12,838.90
Corrected Income:			132,616.63		36,602.89		64,555.14
Less:							
Standard Deduction:			1,000.00				
Itemized Deductions:					2,600.00		2,640.00
Net Income			$131,616.63		$34,002.89		$61,915.14

2100 By Mr. Barnett:

Q. Now, is Government Exhibit No. 224 your computation of the income tax of Paul and Nancy DeLucia for the year 1948? A. It is.

Q. And is Government Exhibit 225 that computation for the year 1949? A. It is.

Q. And is Government Exhibit No. 226 such computation for the year 1950? A. It is.

By Mr. Barnett: Your Honor, I will offer Government Exhibits 224, 225 and 226.

By The Court: The same ruling.

By Mr. Stewart: Your Honor, I am assuming that these are related to the previous questions and that these papers are based on the testimony heard in this case?

By The Court: It must be.

By Mr. Barnett: Exactly.

2101 By The Court: It must be. We are not assuming. It must be.

By Mr. Stewart: Otherwise, I would have an objection, your Honor.

By The Court: If at any time you dispute any of the items, we will hear you.

GOVERNMENT EXHIBIT No. 224

PAUL & NANCY DeLUCIA
Year Ended—December 31, 1948

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income			$131,616.63
Less: Exemption (4) x $600.00			2,400.00
Income subject to tentative tax			$129,216.63
Income subject to tentative tax; one-half of such income if joint return			$ 64,608.31
Tentative tax			$ 37,914.48
Less:			
Tax Reduction:	$0-$400	17% $ 68.00	
	$400-$100,000	12% 4,501.73	
Total Tax reduction			4,569.73
Combined Normal tax and surtax			$ 33,344.75
Multiply amount of combined tax by 2 if joint return			$ 66,689.50
Income tax liability disclosed by return			—0—
Deficiency in income tax as claimed by Government			$ 66,689.50

GOVERNMENT EXHIBIT No. 225

PAUL & NANCY DeLUCIA

Year Ended December 31, 1949

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income				$34,002.89
Less: Exemption (4) x $600.00				2,400.00
Income subject to tentative tax				$31,602.89
Income subject to tentative tax; one-half of such income if joint return				$15,801.44
Tentative tax				$ 5,106.68
Tax Reduction:	$0-$400	17%	$ 68.00	
	$400-100,000	12%	564.80	
Total tax reduction				632.80
Combined normal tax and surtax				$ 4,473.88
Multiply amount of combined tax by 2 if joint return				$ 8,947.76
Income tax liability disclosed by return				—0—
Deficiency in income tax as claimed by Government				$ 8,947.76

GOVERNMENT EXHIBIT No. 226

PAUL AND NANCY DeLUCIA
Year Ended December 31, 1950

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income				$61,915.14
Less: Exemption (4 x $600)				2,400.00
Income subject to tentative tax				$59,515.14
Income subject to tentative tax; one-half of such income if joint return				$29,757.57
Tentative tax				$13,069.69
Tax Reduction:	$0-$400	13%	$ 52.00	
	$400-$100,000	9%	1,140.27	
Total tax reduction				1,192.27
Combined normal tax and surtax				$11,877.42
Multiply amount of combined tax by 2 if joint return				$23,754.84
Income tax liability disclosed by return				—0—
Deficiency in income tax as claimed by Government				$23,754.84

2103 Q. Now, Mr. Saldana, up at the top of your schedule, you have under the year "1948"—let us discuss the year 1948 alone, first.

You have over in the lefthand side "Cash in bank—December 31st."

And then, beneath that, you have the words "Northern Trust Company" and "1st State Bank—Forest Park."

Now, what do the figures under the year "1948" represent, opposite those items?

A. That represents the bank balance of Mr. DeLucia's bank account, per exhibits in evidence in this case, at the end of—

Q. At the Northern Trust Company is $234.49?

A. $234.49, and, at the 1st State Bank of Forest Park, $9,416.43, which is extended over, to total $9,650.92.

Q. And that $9,650.92 is the total of cash in the bank?

A. At the end of the year.

2104 Q. At the end of the year 1948? A. That is right.

Q. All right. Now, you have the next column and in it you say "Total expenditures" $217,107.37.

Where did that figure come from?

A. That comes from the parole reports in evidence in this case for the year 1948.

Q. Those are expenditures that are shown on the parole reports? A. By Mr. DeLucia, that's right.

Q. All right. Now, beneath that you have the phrase "Less funds available," and then you have it broken down to three items. The first item is "Cash on hand 12/31/47" and the amount is $48,697.01? A. That is right. That is the cash on hand. I believe the Exhibit 182 or 183 which was put in by Mr. Mahon showed that cash on hand at the end of 1947 which Mr. DeLucia had, $48,697.01.

Q. On Exhibit 181, do you have that before you, Mr. Saldana? A. That is the computation of possible cash on hand.

Q. Yes. A. I have it in front of me.

2105 Q. And in the last column on the righthand side, the column ends with the year 1947 and the amount of cash on hand is $48,697.01, is that correct? A. That is correct.

Q. Now, then, you have "1st State Bank loan" and beneath that you have "Farm receipts."

What is the purpose of having those items in that particular position on that chart?

A. Those are available cash funds to Mr. DeLucia during 1948. He borrowed $11,000.00 from the 1st State Bank. That was testified here by Mr. Ratajak, and, gross funds received $30,633.82. That comes off the probation report, parole reports, giving a total of $90,330.82 available funds to Mr. DeLucia.

2106 Q. Those are cash funds which you found to be available to him during the year 1948? A. 1948, that is correct.

Q. You consider those funds to be from taxable or non-taxable sources? A. Non-taxable sources.

Q. I see.

Q. Now, then, what do you do next on your chart? "Total funds to be accounted for," and you arrive at $136,427.48. How do you do that?

A. I subtract the $90,330.82 from the $217,107.37, which he expended, and Mr. DeLucia had net expenditures of $126,776.55 during the year.

Then I add to that—

Q. Now, wait a minute. You arrive at total expenditures of $217,107.37 and then you take away from those total expenditures all non-taxable funds available, is that right? A. That is right, ninety-thousand.

Q. And that leaves you one hundred and twenty-six thousand. A. Which Mr. DeLucia has as expenditures.

2107 Q. I see.

Now, then, you add to that one hundred and twenty-six thousand—what? A. The $9,650.92 which he had in the bank at the end of the year. You have your total funds to be accounted for, $136,427.47.

Q. How do you account for those funds, then? A. Well, those are all the funds that Mr. DeLucia had during the year, available, and of which he spent one hundred and twenty-six thousand and he had $9,000 in the bank, giving a total of one hundred and thirty-six thousand dollars.

Q. That means he spent one hundred and twenty-six thousand and still, at the end of the year, he had $9,000 left in the bank? A. He spent one hundred and twenty-six thousand and still had $9,000 in the bank.

Q. Making a total of $136,000? A. Yes.

Q. That has to be accounted for in some way? A. Yes.

Q. What did you do next? A. In the income tax
2108 return, as Mr. DeLucia claimed depreciation—which was allowed.

Q. You allowed depreciation which was claimed on the return? A. That is right, of $3,810.84, bringing it down to arrive at Mr. DeLucia's corrected income for the year, $132,616.63.

Q. And then you did something else after that, didn't you? A. Well, Mr. DeLucia did not claim any deductions, so I gave him the standard deduction, which is a thousand dollars, to arrive at his net income for the year, which comes, for 1948, to $131,616.63.

Q. Now, will you explain to us what you did with respect to the year 1949? A. Well, for the year 1949 I did the same. I looked at the exhibits in evidence and the bank account at the Northern Trust showed that he had a bank balance of $4,905.72.

Q. At what time? A. At the end of December 31, 1949.

2109 Q. O. K. A. The account at the 1st State Bank in Forest Park was closed out and transferred to the Northern Trust Company, so, there is no balance there.

The probation reports for the year 1949 showed that he had expenditures, from the parole reports, $120,933.14.

Those probation reports also showed that Mr. DeLucia had gross farm receipts and loans of $70,646.79.

Those are funds he had available, so, I subtracted from the expenditures, so, it gives Mr. DeLucia, for the year 1949, expenditures of $50,286.35, to which I add the bank balance he had at the end of the year, which gives you total funds to be accounted for, $55,192.07.

From that I deducted the cash balance at January 1st of 1949.

Q. That is the same cash balance that is over in the 1948 column at the end of 1948, is that right? A. Right. In that year 1948— $48,697.01—that represents all Mr. DeLucia's funds—

Q. Take that a little easy, will you, please. Where 2110 are you, with the $200.00, the first item? A. I am sorry.

Q. Is that the first item, $234.49? A. That is his closing balance the previous year. It becomes the opening balance in 1949.

Q. All right. A. I subtracted the opening balance, which in one bank is $234.49, and the other balance was $9,416.43, giving a total of $9,650.92, subtracted from the fifty-five, that is.

Q. Subtracted from the $55,192.07? A. That is right, which gives you excess of expenditures over funds available of $45,541.15.

Q. All right. A. From that I subtracted the depreciation which was claimed on the return and allowed—

Q. And the amount of that depreciation was?

A. $8,938.26, bringing it down to a corrected income for Mr. DeLucia of $36,602.89.

Q. And then what did you do about deductions?

A. Well, in the income tax Mr. DeLucia had itemized deductions and the total figure was $2,600.00—no other details. So, I allowed that to arrive at his net income of $34,002.89.

2111 Q. Do you know what the income was, described on the return? A. He had a loss. In the year 1949 he showed a loss of $2,282.95.

Q. All right. Incidentally, I don't believe I asked you what the income was that was shown on the 1949 return.

A. The 1948 return showed a loss of $18,944.71.

Q. Is there a tax paid on either of those returns?

A. No, no tax paid on either of those returns.

2112 Q. Now, with respect to the year 1950, will you tell us what happened then? Take it a little easy.

A. At the end of December 31, 1950 Mr. DeLucia had a bank balance in the Northern Trust of $6,077.35.

The parole report for the year 1950 showed Mr. DeLucia had gross farm receipts of $42,548.35, which I subtracted from the expenditures, to arrive at a figure of $76,222.41.

Q. And that figure is called what? Is that net expenditures? A. That is your net expenditure for the year.

Q. I see. A. To those net expenditures I add the bank balance at the end of the year of six thousand dollars.

Q. $6,077.35? A. That is right. It gives you total funds to be accounted for of $82,299.76.

From that I subtract the opening balance which is
2113 the previous closing balance in the year 1949, of $4,905.72.

Q. That is the balance in the bank you are talking about? A. That is right, at the beginning of the year. Giving Mr. DeLucia an excess of expenditures over funds available—$77,394.04.

Now, in the year 1950, Mr. DeLucia on his return claimed a depreciation of $12,838.90, which I allowed, bringing his corrected income for the year 1950 to $64,555.14.

On that same return, Mr. DeLucia claims deductions of $2,640.00, which I allowed, bringing his net income for the year 1950 to $61,915.14.

Q. Now, have you prepared a computation of income tax for the year 1948 based on the expenditure method, that is, based on the income that you have described in there? A. I did, sir.

2114 Q. How much income was disclosed on the 1950 return, Mr. Saldana? A. Mr. DeLucia showed a loss of $9,882.00 on the 1950 return.

Q. Have you prepared a computation of the tax for the year 1948? A. I did.

Q. And the amount of net income is $131,616.63 as per your computation, is that right? A. That is right, and that is taken from the previous schedule.

Q. Now, you have allowed him exemptions, have you not? A. Mr. DeLucia claimed four exemptions on his return, for himself, his wife and his two children.

Q. For the year, or what? A. $600 a year. So, I allowed him $2,400.

2115 Q. What figure did you arrive at? A. You arrive at an income, before your tentative tax, of $129,216.63.

Now, inasmuch as he filed a joint return with his wife, you have to divide that figure of one hundred and twenty-nine thousand by two, which gives you $64,608.31 and that is the figure which you figure your tentative tax on, and the tentative tax on that figure amounts to $37,914.48.

Now, there is certain allowance for tax reductions or credits, which I have computed. One is $68.00 and the other is $4,501.73.

Q. Those tax reductions are due to what provision?

A. The provision in the revenue Act to make allowances.

2116 Q. Allowances for what? A. It is a credit for tax reduction.

Q. On the taxes reduced in that year? A. Well, they allow you those credits by law. Bringing it down, then you subtract the $4,000.00 and you arrive at what is called the combined normal and surtax of $33,344.75.

Inasmuch as it is a joint return, you have to multiply that figure by 2, and that arrives to $66,689.50, which is the tax liability of Mr. and Mrs. DeLucia.

Q. For the calendar year 1948? A. That is right.

Q. How much tax liability was disclosed on the return filed for that year? A. None whatsoever.

Q. So the amount still owed to the Government is $66,689.50, right? A. That is correct.

Q. Have you prepared a computation for the year 1949?

A. I have.

Q. The net income for that year was $34,002.89?

2117 A. That is correct.

Q. Less what exemptions? A. He claimed the same four exemptions in that year, so I allowed him again—$2400.00, bringing it down to income subject to tentative tax of $31,602.89.

Then I go through the same procedure as before. I divide that figure in half to arrive to the tentative tax. $15,801.44, and the tax on $15,000.00 amounts to $5,106.68.

Then I allow him the tax reductions there which are allowed by law of $632.80 to arrive to the combined normal and surtax of $4,473.88.

Inasmuch as it is a joint return, I multiply that figure by 2, and Mr. DeLucia's tax for that year amounts to $8,947.76.

Q. How much tax was disclosed on the return? A. None So Mr. DeLucia's tax for 1949 is $8,947.76.

Q. That is still owned to the United States Government? A. That is right.

2118 Q. Now did you prepare a computation of tax for the calendar year 1950? A. I did.

Q. The net income in that year provided by your computation was $61,915.14, was it? A. That is correct.

Q. And you allowed him exemptions as claimed on the return of $2,400? A. That is correct.

Q. Leaving income subject to tentative tax of—

A. $59,515.14.

Q. And you divided that in half? A. Divided in half.

Q. This is a joint return also? A. Joint return, making it $29,757.57.

Q. And what was the tax on that sum? A. $130,069.69. Then I allowed him the credit for tax reductions of $1,192.27, arriving to the combined normal and surtax of $11,877.42.

Inasmuch as it is a joint return, I multiplied that 2119 by two, and it gives you $23,754.84, which is the tax due for that year.

Q. And how much tax was disclosed on the return for that year? A. None.

Q. So he still owes how much? A. $23,754.84.

Q. Now, Mr. Saldana, in the computation of funds available, did you take into consideration the alleged mortgages of Hugo Bennett to Mr. DeLucia? A. I did not.

Q. Why not? A. Because the testimony of George Dick in the record on page 1614 says, "That mortgage is between friends and I do not owe him."

By Mr. Stewart: Your Honor, I object to that and move to strike it out. This witness has no right to pass on the credibility of a witness.

I kept quiet while he was making his figures because it was expressly understood that he was supposed to base it on the evidence. He has no right to say that he is 2120 going to reject certain evidence here.

By Mr. Barnett: Your Honor, my purpose in bringing that out was, of course, so that counsel would know how we handled that thing. His computation is based on the evidence, and part of the evidence is the testimony of Mr. Dick that Mr. DeLucia told him that those were not real mortgages, so the result is that he is not passing on the credibility of the witness.

He is basing his computation upon the evidence that was heard in the court room.

2121 By Mr. Stewart: Now, you see how dangerous that is? Mr. Dick never said any such a thing as Mr. Barnett has just said. Mr. Barnett has made a mistake about the evidence.

The question of what the evidence is is for the jury, and the credibility of that testimony or that witness, and what it means in that case, is not for this witness. That is not an accounting problem. All he can tell us is that he left the loan out.

By The Court: How much was that loan?

By Mr. Barnett: $40,000.00 and $40,000.00 that Hugo Bennett loaned to Mr. DeLucia.

I have no objection to handling it that way, your Honor. I merely wanted to point out the fact that what these figures comprise—

By The Court: Let it stand that he left it out.

By Mr. Barnett: No further direct examination, your Honor.

By Mr. Stewart: No cross.

2122 By Mr. Barnett: We have no place to go. We have no more witnesses.

By Mr. Stewart: Do you rest?

By Mr. Barnett: Yes, we rest.

Mr. Stewart: Defense rests.

441A MOTION FOR ACQUITTAL

Now comes Paul DeLucia, by Wm. Scott Stewart his attorney, at the conclusion of all of the evidence and as to each count moves for judgment of acquittal.

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2126 By The Court: I am going to overrule the motions of each defendant for a directed verdict.

By Mr. Green: Those have been filed in writing, your Honor.

By The Court: Yes. I have them here before me. Let the record so show.

By Mr. Green: And likewise the pending motions to strike on behalf of Bulger?

By The Court: Those will be overruled.

By Mr. Green: Yes, sir.

2127 By Mr. Stewart: Now, what remains is to argue the case to the jury.

By The Court: And all the exhibits will be received in evidence.

By Mr. Green: They are all in evidence.

By The Court: I know, but if any were overlooked.

How long do you think you will argue?

By Mr. Barnett: Your Honor, I think I can probably sum up in about an hour.

By The Court: Will one full day be enough for both sides?

By Mr. Stewart: It looks like it.

By Mr. Green: Oh, sure.

By Mr. Barnett: I think it will be plenty.

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2148 By The Court: Let's put it the other way. If there is no advantage or there is nothing prejudicial in so far as the defendants are concerned in my at this

time anticipating a completion of the arguments today, and then instructing tomorrow morning—would that be disagreeable or unfavorable?

By Mr. Stewart: I am quite certain the way it will work out will be that Mr. Barnett will make his argument, and I will start at 2:00 o'clock. Mr. Gorman is going to follow me, and he can take as much time as is necessary, and then likely we will leave Mr. Green for tomorrow, and then Mr. Barnett.

By The Court: That will be the order. Bring out the jury. Then you mark your instructions.

By Mr. Barnett: I will do that tonight. I would like to say before we leave, though, Mr. Stewart has submitted a number of instructions, three or four, regarding the net worth theory. Your Honor mentioned you read the Holland case, which of course is the prime net worth case—

By The Court: Holland, Freidberg, and five or six of them.

2149 By Mr. Barnett: I wanted to say all the net worth originally stem from what we call the expenditures, and the case we have here is an expenditures case. As the result there is a little change in terminology necessary, and we have prepared our instructions accordingly.

By The Court: Let me add something that has been troubling me all through the reading of your instructions and the cases. I may be off base, but all the cases talk about circumstantial evidence. I don't agree with that in this case.

You have got written reports every month to the Parole Board. You have sworn testimony before official bodies. That seems to take it out, in the main, from the circumstantial cases. At least, in a major part.

There are some expenditures, yes, but in the main when you have written or sworn statements under oath covering the bases for expenditures, as you say this is an ex-

penditure system, you remove it completely from the circumstantial group. You put it into a more direct evidence—

By Mr. Stewart: May I say, your Honor, with all due respect, you are mistaken.

2150 By The Court: That is what I want to know.

By Mr. Stewart: We request that your Honor listen to the arguments as we argue it to the jury.

By The Court: No, I am talking about a question of law. If I am wrong on the law, straighten me out now.

2151 By Mr. Stewart: All right. You can call those parole reports direct evidence, and they are not disputed. There are certain expenditures.

But the Government must still establish certain other things in the case that they must resort to circumstantial evidence on.

By The Court: I didn't say entirely circumstantial.

By Mr. Stewart: I will say it is entirely circumstantial.

By The Court: That is what I want to get.

By Mr. Stewart: Do you want to know the reason why it is entirely circumstantial now?

By The Court: Yes, I would like to know. I have to determine that.

By Mr. Stewart: Here is the reason, and Mr. Barnett can correct me if he has any different theory.

If you find evidence where a man has spent money beyond the amount he has been reporting as income, which is undisputed in this case—during the indictment here, Paul DeLucia spent more money than he reported to the tax officials. Then the question arises as to whether or not that is money spent out of income or not, and that must be proved circumstantially or not proved at all be-

2152 cause it is a circumstantial evidence case.

Then they have to comply with all these regulations and provisions which have been laid down in the Holland case to safeguard a defendant because if you are not careful, you throw the burden over onto the defendant, and that is what you should not do.

The Government must establish an opening net worth, must establish the amount at the beginning of 1948. Then they must show the disbursements beyond the amounts in the return. Then they must rely on circumstantial evidence to show that that came out of income, and that is a circumstantial evidence case.

By The Court: Do not those reports indicate income or lack of income as well as expenditures?

By Mr. Stewart: You will be able to distinguish those cases from ours at the bar. I don't believe you will find a case in the reports where the defendant hasn't helped the Government make his case by making a statement. You don't have that here.

They must rely on circumstances, if anything at all.

By The Court: Of course, Mr. Stewart, I don't want to have you feel for a minute that I am substituting my judgment for that of the jury. That is entirely for
2153 the jury to determine, the guilt or innocence. I am merely applying it so far as the instructions are concerned, and I have not eliminated the circumstantial instructions.

By Mr. Stewart: So long as you don't do that.

By The Court: Oh, no, but I am merely telling you, I am a little concerned about it because it is not quite a complete circumstantial case.

By Mr. Stewart: You will be good enough to listen to both Mr. Barnett and to us, and I think you will agree this is a circumstantial evidence case.

By The Court: I will listen very carefully.

All right, bring out the jury.

By Mr. Barnett: I might say in the circumstances of this case, Mr. Stewart mentioned proof of opening net worth. We have to prove available cash on hand in a net worth and expenditures case, and we have to run down all items from which expenditures could have arisen.

In other words, we have two alternatives in an expenditures case. Number one, the source of the money that was spent to determine the income.

By The Court: You don't have to indicate all the sources.

2154 By Mr. Barnett: Secondly, if we are unable to show a source, if we show that he did not have an accumulation of cash on hand and did not have income from other nontaxable sources at the beginning of the period, then the inference is clear that the disbursement of money during the taxable year was from taxable net income.

By The Court: All right.

Bring out the jury.

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OPENING ARGUMENT TO JURY MADE BY MR. BARNETT

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2158 Now, the defendants in this case have been charged with two things, both very closely related, however. The defendant Paul DeLucia has been charged with attempting to evade and defeat his Federal income taxes for the years 1948, 1949 and 1950. Those charges 2159 are in the first three counts of the indictment.

He and the defendant Bulger have been charged jointly in the fourth count of the indictment with having conspired to make false statements in a matter within the jurisdiction of a department of the United States, that being the Internal Revenue Service.

Of course, the false statements that it is charged they conspired to make are the false statements relating to the story about the $300,000 cache in the attic in Mr. DeLucia's home in River Forest.

2160 So, fundamentally, the key to the entire case is the truth or falsity of that story about the $300,000.00. The reason for that is this: If that story is true, we do not belong in this court room. If that story is true, Mr. DeLucia could have spent the money that he did spend in 1948, 1949 and 1950 out of that $300,000.00 hoard, and therefore it would not be taxable income to him during those years.

On the other hand, if that story is false, as we contend the evidence shows that it is, then Mr. DeLucia, having explained that the source of the funds in 1948, 1949 and 1950 came from that $300,000.00, then his explanation is false, the income must have been derived from taxable income, that is, the disbursements in 1948, 1949 and 1950 must have been derived from taxable income received by him during those years.

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2192 Ladies and gentlemen, the net result of that whole story in this analysis, as I give to you, I think, shows there was never a dollar in that attic. Think of this preposterous story, two grown intelligent men, sitting around in an attic counting thousand dollar bills.

Ladies and gentlemen, this never happened and I think the evidence in this case shows clearly and convincingly that it never happened.

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2198 As a result of the investigation, we feel certain that we have plugged up all possibilities of other money being available to Mr. DeLucia at the end of 1947 over and above the $48,000 that we have allowed him.

Now, if he spends in 1948 money over and above
2199 that $48,000, it has either got to be accountable for by loans or by income.

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2200 We have not given him credit for having received a mortgage of $40,000.00 from Hugo Bennett in that year, and I will discuss that shortly.

• • •

Now, as I say, we have given him credit for every
2201 possible item of income or resources or assets that he could have had at the beginning of the period. We have given him credit for every legitimate loan that he obtained or loan that we could not prove was illegitimate in the years 1948, 1949 and 1950. We have not given him credit for the alleged Hugo Bennett mortgages.

Now, our reasons therefor: I would like to point this out as an aside. What kind of operation is this, where a man in one breath says that he has $300,000.00 stored in a tin box in his attic, and in the next breath he has got to borrow $40,000.00 from a friend?

About the mortgage itself, Municipal Court Judge Joseph Butler testified from the stand that a long time schoolmate acquaintance of his, Hugo Bennett, came to him and said I want to loan some money to Paul DeLucia and Judge Bennett or Lawyer Bennett did not know who he was. He said I want everything legal. But it is a mortgage for $40,000.00 on which there is no principal and no interest payment due for five years. That is a pretty nice mortgage.

2202 Consider the background of Hugo Bennett. He is an official of Sportsman's Park race track in Chicago, Illinois.

The witness Wilczak, the electrical contractor, formerly employed by Alex Ponzio, the son-in-law of Paul DeLucia, testified to the influence that Paul DeLucia obviously exercised at Sportsman's Park race track. He testified to having seen Hugo Bennett down on the farm at what appeared to be a meeting of men in one room and women gathered in another.

Then there was the uncontradicted and un-cross-examined testimony of George Frederick Dick, III, the banker from Bloomington, Illinois, who said that when he told Mr. DeLucia that he had discovered a second mortgage on the Kendall County farm, the time that the farm was being sold by DeLucia, and that they would have to have a release on that mortgage because the purchaser desired to acquire the property mortgage free, Paul DeLucia said there will be no trouble, it is a friend; I don't owe it anyway.

2203 Who knows better whether he owes it or not than Paul DeLucia? I think that is sufficient basis for you and us concluding that the Hugo Bennett loans were nothing.

Let's explore the possible reasons why the loans were made, why they were made of record, why everything was made legal, or at least to look legal.

Paul DeLucia has reported money on the expenditures basis all his life. He knows more amout the expenditure basis of reporting income than I do.

He knows that in the year when he is spending money like a drunken sailor, that if he makes a loan, that means so much of that loan is concerned, that money can be considered to be non-taxable. It is perfectly obvious. It goes back to 1938 and '39.

In 1938 and '39, he was spending money wildly. He was building additions on the Long Beach property, buying and building additions on the River Forest property.

He was spending money so rapidly that he knew that it was obvious that he was spending money and he had to do something about it.

He wasn't reporting enough on his returns. So,
2204 what does he do? He puts a $30,000 mortgage on the River Forest house with a fellow named Steve Matalone. That was a mortgage on which he stopped paying interest in 1942. He never paid another dime of interest and never paid anything on the principal until 1951, at which time he sold the Kendall County farm. That mortgage itself was a very suspicious operation.

We have given him credit for having had those funds from a non-taxable source. But it shows the awareness that he had and has of the use of loan money in a currently taxable year.

That is the reason why he goes to Hugo Bennett in 1948. He is spending money too fast.

On his parole reports month by month by month, he must tell the parole officer how much he is spending and must tell him where he gets it. The only thing he says on there is "I get it from previously acquired funds."

He knows that he has got to have a ready explanation for some of these funds, so he makes a loan with Hugo Bennett. What better explanation can you have than that you made a mortgage with a friend?

2205 Consider his discussion of the 1950 mortgage when inquiry was made about that before the Kefauver Committee. They asked him about his $300,000.00. They asked him why, why would he have to borrow $40,000.00 from a man like Hugo Bennett?

One of his responses that I recall so vividly was this: "I was told when I was a boy to always have cash money on hand."

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2206 I have talked to you a good deal, I think, about the question of the opening cash on hand. I have talked to you about the reason why in our computations we have not allowed the Hugo Bennett loans.

I think that our evidence establishes a very tight starting point. I think it establishes an unimpeachable starting point. If you recall, the examination of our agents was very limited, the cross examination, I mean, and there has been no effort that I could determine or detect which would tend to bring out the possibility of any areas that we have not searched or areas that we have not covered.

2207 And now, I would like to talk to you about this problem—it is not really a problem because if we have a tight starting point, as I think we have, it isn't necessary to do anything further. Once you show the expenditures, you are entitled to infer that those expenditures are from income received in the year in which the expenditures were made.

• • •

2209 Now, you may recall when we were reading the Kefauver testimony, that story about how the 1946 settlement was made, whereby Eugene Bernstein sat in his office and received money for Paul and money for Louis on his desk; subsequently made the payment.

Mr. DeLucia was asked if he knew who those people were, and he said, "No." Had he made any effort to find them? He said, "No."

Why? Because he was on parole and his parole officers had advised him that he could not associate with people whom he had previously associated with; that that would be considered a parole violation and, as a result, he could not look those people up; he would do that after his parole was over, but right now, he couldn't do it.

You may remember also, in that connection, that when Mr. Bernstein appeared on behalf of Mr. DeLucia, before Joseph B. King, among other things, he explained to Mr. King that Mr. DeLucia could not have had any business operations, could not have had any taxable income during 1948, 1949 and 1950 because he was on parole and a man who is on parole is watched and cannot associate with
2210 unsavory characters who might be the source to him of illegal gains and income.

But, you recall the testimony of the witness Winkleblack. Not only did Mr. DeLucia associate with these people when he was on parole but they met with him in prison, Francis Curry, Tony Accardo, who came down at the prison to consult with the boss about the operations of the machines.

After he was on parole, he met with Francis Curry and Tony Accardo, Hugo Bennett and others whose names we do not know met with him at his farm house in Kendall County, Illinois, met with him in his home in River Forest, Illinois, used influence to obtain work for his son-in-law, wiring the bookies in Chicago and Cook County, electrical wiring of booths, a Sportman's Park man.

Another bit of evidence concerning source, he reports on his income tax returns for 1935 through 1943 various sums of miscellaneous income.

He is, at one time, asked by Revenue Agent Klein what the source of miscellaneous income is and he says, "Gambling, I gamble."
2211 Revenue Agent Klein and Revenue Agent Ruggaber later told us that the word "miscellaneous" and the word "gambling" are euphemisms, they are cover words, they are words used to describe income from illegal sources that the maker of the return does not care to fur-

ther describe. He does not want to let the actual source be known. Do you remember that? Do you remember how Mr. DeLucia reported in the years 1935 to 1943 this miscellaneous income?

2212 We say the great bulk of that miscellaneous income resulted from the extortion money that he received during that period of time.

But, now, look at the returns for the years 1945 through 1954. Stop with 1953.

The returns for 1945 through 1953, those years; Mr. DeLucia is on parole—pardon me. From 1945 to 1947 he is in prison but from 1947 through 1953 he is on parole.

You do not find a dollar of this miscellaneous income during that period of time.

In March of 1954 he gets off parole. He is a free man again. Now he begins to report income in the customary $70,000 figure from "Personal gambling at the track."

That is another euphemism, "Personal gambling at the track."

"Personal gambling at the track" in the State of Illinois is not illegal but I doubt if Mr. DeLucia was any better able to pick the horses at the track than any one of us and I doubt if any one of us could come anywhere near making, year in and year out, $70,000 a year at

2213 the track from personal gambling.

* * *

2217 At the recess, ladies and gentlemen, according to my notes, we were discussing inferences of source.

You recall, to sum it up in a brief minute or two, we talked about the testimony of the witness Winkleblack that down in prison Mr. DeLucia was visited by Accardo and Curry concerning business interests.

Then back in Chicago, the witness Wilczak testified to the influence of Paul DeLucia in getting contracts in connection with Sportsman's Park and various bookies.

Mr. DeLucia's returns before and after the parole period show income sources such as gambling or miscellaneous.

These things, I believe, lead to a fair inference that Mr. DeLucia while he was on parole never ceased whatever the activities were that produced the income for him prior to 1944, and he came out in the open on his returns with it after he was released from parole.

But I don't think for a minute that he abandoned his
old associates while he was on parole and then took
2218 up with them again after he came off parole.

I think the inference is clear that his association remained the same throughout the period he was on parole, and he still had available to himself the same source of income, whatever that may be, that he had prior to the time he went away to the penitentiary.

2219 Now, I think I mentioned to you that if the Government is in a position to show a possible likely source of income on the part of a taxpayer who is spending money over and above what he reports on his return, then we are entitled to infer the money that is spent over and above that reported on his return, is unreported income in that year because there is a source from which it could have been obtained.

There is an alternative method of proof and that is, if you block out all non-taxable receipts, such as we have done in this case, then you, by that alternative method, show the unreported income or, rather, that the expenditures in that year must have been derived from an income producing source rather than from a non-taxable source, or, rather than from cash on hand in the beginning of the period.

We, I think, have done both things in this case, both things.

I think that his Honor will instruct you that if you find in either event—if you find that we have established source or if you find that we have blocked off in the beginning

2220 of the period all non-taxable receipts that would have been available to him during the taxable period involved, in either event, you may find the disbursements he made during the years 1948, 1949 and 1950 were the result of taxable income received by him during those years, which income was not reported on his returns for any of those years.

He even reported a loss on his returns during each of those years.

He reported a loss on each return for 1948, 1949 and 1950, despite making large expenditures.

It is inconceivable that a man would be spending his capital, spending his capital, having no available income, but spending his capital in those large sums that this man was spending them during the years 1948, 1949 and 1950. He had to have a source of income. He couldn't possibly have been spending everything that he saved up during those years without having income coming at the same time.

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2227 The books of Schmidt, Garden & Erickson show that approximately $90,000 cleared through the office of Mr. Garden by the hand of Paul Salvi, now DeLucia, dropping it on Mr. Garden's desk—$90,000.

Then you recall that we introduced the evidence concerning the bankruptcy of the Iitalian Village, showed the bankruptcy file. There are a couple of reasons for introducing the bankruptcy file. One of the reasons is this: Paul DeLucia apparently handled $90,000 in the year 1934. The bankruptcy file proves conclusively that he didn't get any of that money back. He didn't get any of that money back. It was a complete flop, a total loss.

We don't know whose money that $90,000 was. We
2228 don't know how much, if any of it, belonged to Paul DeLucia. But whatever it is, it is money that went down the drain in that bankruptcy proceeding, and it is money that was not subsequently available to him for any purpose and could not have become a part of his cash on hand in any of these years that we have treated.

That is one purpose for showing you the matter of the Italian Village bankruptcy.

* * *

2233 On September 1, 1954, Paul DeLucia, Scott Stewart, Eugene Bernstein came into the Treasury Department and they appeared before Thomas M. Smith, Richard Stonesifer and John Scholz, and, in effect, what they said at that time and place was, "We stand on our story as told to the Kefauver Committee."

There were no leads offered at that time. They said, "We stand on our $300,000. Upset it at your peril."

Mr. Smith said, "Well, gentlemen, true, that is a story than has been told by the taxpayer but it is an uncorroborated story."

2234 The meeting ended and shortly thereafter, the case was referred to the Office of the Regional Counsel and, Assistant Regional Counsel Joseph B. King analyzed the case, sent a letter to the taxpayer and to his counsel of record, Eugene Bernstein, telling him that he had the matter for review; would they like a conference to present any matter of defense?

Eugene Bernstein came in and presented a matter of defense. That was when Eugene Bernstein came in and said, "I have a schedule of funds available."

That was when he said for the first time, Paul DeLucia had money in the amount of $404,894, not identifying it as the extortion money, but, for the first time, claiming that perhaps Paul could have gotten that money.

Mr. King said to Bernstein, "What about this $300,000 story? I am interested in hearing all the surrounding details. I am interested in obtaining any corroboration possible of the taxpayer's story about the cash on hand."

Mr. Bernstein was prepared to give him corroboration. He said, "I have a lawyer in town who was there and who counted the money."

2235 He didn't come out with the name of the lawyer at first.

But, later, in the conversation, he advised Mr. King that it was Joseph Imburgio Bulger. He said, "There was a lawyer and one other person whose name I do not know who counted the money."

Mr. King said, "I would be very happy to hear what Mr. Bulger has to say about the $300,000. Produce him."

Mr. Bernstein said he would produce him and he would notify Mr. King of the time and date when he could produce him.

Subsequently, Mr. Bulger was produced by Mr. Bernstein, on November 19th, when he came into Mr. King's office and gave a reported statement.

You recall in the Grand Jury Mr. Bulger testified he went there at the specific request of Mr. DeLucia; that he went first to Mr. Bernstein and told Mr. Bernstein of that at the request of Mr. DeLucia. That when Mr. Bernstein said, "I think you ought to tell that to the Revenue Department," and he said he did not like to do that. He then received another call from Mr. DeLucia; in re-

2236 sponse to that call, he went back to Mr. Bernstein; he made arrangements to go into the Revenue Service to repeat the story.

2237 So, then, on November 19, 1954, Mr. Bulger came in before King and told this incredible fantasy of counting $300,000.00 in the attic.

At that time and place, Mr. Bernstein informed Mr. King that he had been mistaken about other persons having knowledge of the $300,000.00; that there was no other person. This is Joseph Imburgio Bulger who is telling Mr. King about having counted that money.

* * *

CLOSING ARGUMENT FOR GOVERNMENT

2463 If you recall, Mr. Green and Mr. Stewart both said
2464 that Mr. Ruggaber had been asked whether or not Paul DeLucia could have gotten all of the $1,800,000 in the extortion trial. But the question that was actually asked was:

> "So as far as your transcript is concerned, in so far as those statements are concerned, Paul DeLucia could have gotten 100 per cent of the money, so far as you are concerned, is that right?"

And Mr. Ruggaber answered:

> "He could have."

That question had several meanings. The word "transcript" is used in there.

Does that mean the transcript of the extortion trial, or does it mean Mr. Ruggaber's transcript of the money that he allotted to Mr. DeLucia?

> "Paul DeLucia could have gotten 100 per cent of the money."

Does that mean 100 per cent of $1,800,000, or does it mean 100 per cent of $404,000, the two-ninths which Mr. Ruggaber allocated to Mr. DeLucia?

That is why, if you recall, subsequently, in an ef-
2465 fort to clear that up, on redirect examination, I said to Mr. Ruggaber, after reading that question to him—which, incidentally, if you recall, does not end with the words "$1,800,000"—I asked Mr. Ruggaber what he understood that question to mean, and Mr. Stewart objected violently.

He didn't want to know what Mr. Ruggaber understood that question to mean.

So then I asked Mr. Ruggaber:

"According to the evidence that was available to you, how much of the proceeds of this extortion money could have been received by Mr. DeLucia?"

Mr. Stewart didn't even want that question answered, but we finally got the answer out, and the answer was:

"$404,000 plus some odd dollars."

2466 So it is clear in the record. Mr. Ruggaber never, never, even by implication, thought there was any evidence that Mr. DeLucia received more than the $404,000.00.

Incidentally, bearing on that point—it is kind of interesting that now in this trial, for the first time, does anybody want to lay any claim to that $404,000.00. Not only do they want the $404,000.00 now, but they want $1,800,000.00.

But bearing on that point, there were seven men that were charged in that conspiracy: Paul DeLucia, Louis Campagna, Frank Diamond Maritote, a fellow named Gioe, a fellow named Pierce, a fellow named Roselli—I can't remember the seventh—oh, yes, Nitti, Frank Nitto. It is sometimes Nitti and sometimes Nitto.

Frank Nitto was not alive at the time of the trial, so there were six men that went to trial. Those six men were charged with a conspiracy of having extorted this $1,800,000.00, and the conspiracy related to an agreement with Browne and Bioff, who had already been tried and sentenced for their part in the matter, in an earlier
2467 trial.

The testimony was that of the total money extorted, $1,800,000.00, one third went to Browne and Bioff, two-thirds went to this other crowd, with Circella being the man that usually picked up the money.

The money was not divided by six men. It was divided by three men, DeLucia, Campagna and Nitto. We don't know what, if any, portion of their several aliquot shares these three men, DeLucia, Campagna and Nitto—Nitto being dead, it was charged to his estate and his estate eventually had to pay the tax. We don't know what portion of what they received they had to pay out to the other members of their conspiracy.

That is speculative, and we don't want to go into that. We gave Paul DeLucia credit for having received $404,000.00.

Now he reported some money on his income tax returns. He reported on his income tax returns under the caption of Miscellaneous for that period of 1935 to 1940, he reported $177,000.00.

Not knowing specifically from his return, and not having obtained any help from Paul DeLucia as to what
2468 that $177,000.00 was, and knowing by virtue of the extortion trial that his principal occupation was extortionist during that period of time, the Government credited him with having reported $177,000.00 out of the only occupation they had proof that he was engaged in, extortion.

They claimed that he had received over and above that another $227,000.00 upon which he had not paid any tax.

Now, that was the tax paid. That was the tax settlement. I mean, it was eventually settled for a lot less than what the Government charged. But that is the thing that the Government went into in 1945.

* * *

2475 Until there is evidence to the contrary, we need not take into account any more money than is shown on the returns. Where he doesn't file a return, we have a right to assume he did not make enough money to pay a tax in his return. Be that as it may.

Aside from this presumption, we have this physical,
2476 concrete evidence of the manner in which he lived, and the amount of circumstances.

We know in later years he isn't a man who loves to live in modest circumstances. When he has money, he lives like a king.

I think the presumption is plain. It is not just a presumption. It is circumstantial proof that he didn't have any great hoard of money in the '20's which he carried over into the '30's and, so far as dumping this money into the Italian Village is concerned, first, the amount is ninety, not one hundred and eighty thousand, and, secondly, there are a number of men involved.

Mr. Garden can't remember all those names. Serritella is one I can remember. I can't remember them, but, at any rate, there were quite a few names involved. There were quite a few people who were at that meeting.

Whose money was it? Was it Paul Salvi's money? Was part of it his money? Was any of it his money? Nobody knows.

Nobody has ever told us whose money it was. Paul Salvi has never told us whose money it was. Joseph Im-
2477 burgio Bulger has never told us whose money it was.

But, this we know—this we know: Whoever that money belonged to, it was sunk in the bankruptcy of the Italian Village.

Bulger at that time indicated a total of $90,000 that was paid in that manner game—$45,000 out of his own box, another box, and $45,000 of it came from Edward O'Hare of Sportsman's Park.

But, he didn't get that $90,000 back out of the bankruptcy. The bankruptcy records show that.

Joe Bulger got a total of $8,000. He filed a claim for $52,000 and he got a total sum of money back of $8,000.

2478 Furthermore, whose money was that Bulger said it was his, not DeLucia's.

So then, no matter how the defense attacks our figures for the period 1920 to 1933, we are starting off with a bankruptcy after 1934. That is pretty good evidence to start with.

And then we see his historical rise in prominence as soon as the extortion money comes in. I would like to come back to that point later.

Mr. Gorman has complained about the beginning of the conspiracy as charged in the indictment, being 1950. I don't know whether he said it or Mr. Stewart said it, but they tie in the statute of limitations some way. I don't understand it. I don't understand what they are talking about. If there is any statute of limitations problem involved in this case, his Honor Judge Miner will explain it to you.

• • •

2484 But this I know. Mr. Stewart has treated you to a discourse on the law, and he has talked about the Holland case. I have read the Holland case. I have it right here.

2485 The Holland case says that just such evidence as we have had in this court room is perfectly good and legal evidence, and if the Holland case had said anything else, we wouldn't be in this court room.

• • •

2490 He talked about Tom Smith. I asked Tom Smith to repeat one conversation that he had with Mr. DeLucia. In the orderly procedure with which we attempt to put in evidence, in my opinion it was not yet the time to put in evidence the story that was told to Smith, Stonesifer and Scholz, and that is why at that time I did not ask Smith about the conference that took place on September 1, 1954.

Mr. Stewart recognized that, and he said that he would like to cross examine Mr. Smith about that conference. He knew that he was not entitled to cross examine him about that conference until Mr. Smith had testified about that conference.

And so, with my agreement, he reserved his right to cross examine Tom Smith until a later date, after that September 1, 1954 conference had been put in evidence.

Well, a couple of days later that conference did go into evidence, but he never called Tom Smith back to the
2491 stand to cross examine further about that conference.

* * *

2494 Now, incidentally, criticism is made of the type of evidence of source that we have presented here. What is our evidence of source? The testimony of Winkleblack that he overheard conversations of Paul concerning
2495 the operation of Paul's interest in slot machines in Will County, the fight between Curry and Accardo, the testimony of Wilczak that he saw Curry and Accardo on the premises of Paul DeLucia—Accardo on several occasions, Curry on one.

The fact that he and Ponzio were able to get certain jobs which were connected with bookies and Sportsman's Park —in addition to that, there were the returns filed by Mr. DeLucia, admittedly reporting what income is reported, as admittedly received from illegal sources both before and after his period of parole.

That is the evidence of possible source from which his income could have been derived in the years 1948, 1949 and 1950, the tax years that are involved here.

2496 They say he couldn't have done anything illegal while he was on parole. This testimony proves that

he was a parole violator. He wasn't hiding in his River Forest house from the parole authorities.

What kind of surveillance can a parole officer keep, a probation officer, who has many men who are required to report to him once a month as to their activities? What kind of surveillance does he keep?

A man comes in once a month and files a report and a man goes out. That is the surveillance they keep. They come and see a parole officer once a month.

He had ample opportunity to engage in illegal occupations during the years 1948, 1949 and 1950 and I say this testimony proves that he did, in fact, engage in such activities, perhaps remotely and perhaps he kept in the background.

He, after all, is the chairman of the board; they come to visit him in prison to iron out squabbles. He doesn't have to go out on the street too much but he is in a position
2497 to obtain revenue from those sources.

I also want to tell you this, ladies and gentlemen: Despite that source problem, in the light of the fact that Mr. Stewart has seen fit to discuss the law with you, the United States Supreme Court says that if you adequately support your starting point, as I contend that we have done here, you don't need source.

If your starting point is good, you don't have to show source. If your starting point is weak, you better have source.

We have got both. We have a tight starting point and we have a source of income during the years in question.

Mr. Stewart talked about the Hugo Bennett loan. Now, that is a pretty interesting subject.

I think we discussed the question of whether or not those loans were real. We displayed the loan to the jury and

to the Court. We called Judge Butler to testify to the making of the mortgage. He told you how that came about.

They came in. Hugo Bennett came in and he wanted to make this thing legal. Then the mortgages were made of record. Mr. Stewart wants to know why we didn't call Hugo Bennett. Hugo Bennett is their witness. Why didn't they call Hugo Bennett?

There are quite a few questions that I would like to ask Mr. Hugo Bennett if I had him on cross examination. But, if I put him on, I have got to vouch for him. When I put a witness on, I am supporting the truth and veracity of what he says from that stand.

What did I feel about putting Hugo Bennett on? The next thing is, I would have to try and tear him down.

* * *

About that second mortgage. Everybody knew about the first mortgage when the deal was started upon. Why didn't Paul tell about the second mortgage? I will tell you why. It was such a phony mortgage that he had forgotten about it. It just didn't occur to him and the formalities of reporting it had slipped his mind. He had signed a paper in connection with that mortgage in Lawyer Butler's office and he didn't think any more about it. He didn't think about the circumstances under which Lawyer Butler would go and have it recorded, just neglected it entirely. So far as he was concerned, it wasn't a mortgage of record and he didn't know or he didn't realize it was a mortgage of record until Mr. Dick told him they had discovered it.

* * *

2530 AND THEREUPON THE COURT CHARGED THE JURY:

1. By The Court: Ladies and gentlemen, of the jury, it now becomes the duty of the Court to instruct you on the law in the case, wherein you have heard the evidence and the argument of the parties.

2. These instructions which I am about to give you are intended to be a connected and consistent whole body of instructions. No one instruction can be taken away from the others and considered by itself unless it is of that peculiar character which might require it to be so considered. In general these instructions are a connected and continuous whole and they must be considered each in connection with the others and not picked apart and considered piecemeal or by sentences, phrases or paragraphs.

3. Fraud is never presumed but must be established by clear and convincing evidence. There must be an intention to defraud. The burden of proving fraud, if any, is on the Government. Even if you believe that a deficiency in payment of taxes is shown, the Government cannot sustain the burden of proving fraud by merely establishing deficiencies in tax. There must be additional independent evidence
2531 from which fraudulent intent on the part of the taxpayer can properly be inferred beyond a reasonable doubt.

4. If you believe that the evidence shows that DeLucia spent more money than he reported as income in a given period, such evidence, if any, does not place upon DeLucia the burden of proving that such expense, if any, was not taxable income.

5. If you find that the testimony of Joseph Bulger given before the Revenue Service Officials as to about $300,000 observed by him in the hands of DeLucia, stands uncontra-

dicted by any other testimony in the record and the testimony of Joseph Bulger so given on this point is not inherently improbable or contrary to any facts stated to justify the jury in disregarding such testimony on that question, the jury cannot disregard such testimony willfully or through mere caprice.

2532 6. The form of DeLucia's tax return is immaterial so far as this case is concerned. It makes no difference whether DeLucia reported in detail the source of his gross receipts. The defendant DeLucia is not being prosecuted in this case for any deviation from official form. The controversy is not one dealing with any failure on the part of DeLucia to particularize the items or sources of income. It is whether DeLucia has made a false return as to total income for the years designated, and so, if he was guilty of willfully attempting to defeat and evade his tax.

7. If you believe that DeLucia was able to accumulate a large sum of cash prior to 1948, sufficient to cover his expenditures for 1948, 1949 and 1950, you should find him not guilty. This is true even if DeLucia acquired the cash in an illegal manner and had failed in previous years to pay taxes on such cash.

8. In an income tax fraud prosecution based upon available funds and expenditure method of proof, each prosecution year, here 1948, 1949 and 1950, must stand alone. The Government must prove opening available funds
2533 for each year.

9. If you believe from the evidence that the Government agents have ignored or excluded funds which DeLucia had available in addition to those which the Government included in its computation and the funds ignored or excluded are sufficient to cover any deficiency shown, you will find the defendant not guilty.

10. The jury are instructed that the presumption of innocence is not a mere form to be disregarded by the jury at pleasure; but it is an essential substantial part of the law of the land, and binding on the jury in this case. It is the duty of the jury to give the defendants in this case the full benefit of this presumption and to acquit the defendants unless the evidence in this case convinces them of guilt as charged, beyond all reasonable doubt.

11. The Court instructs the jury that the defendant at the outset of the trial is presumed by the law to be an innocent man, and he is not required to prove himself innocent or to put in any evidence at all upon that subject. And in considering the testimony in this case, and during your deliberations, you must look at the testimony and
2534 view it in the light of the presumption which the law clothes the defendant with, that he is innocent, and it is a presumption that abides with him throughout the entire trial of the case and in your deliberations until the evidence convinces you, if at all, to the contrary, beyond a reasonable doubt.

2535 12. In your deliberations it will be proper for you to consider a fact established by circumstantial evidence if you believe that such fact has been proved. But in your application of such fact to this case, you are warned that it would not be proper to use a fact so established to establish another fact. In other words, the law does not permit you to build one inference upon another inference.

13. Circumstantial evidence is defined as meaning that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists which is sought to be established, the proof of certain facts and circum-

stances from which may be inferred other facts and circumstances which usually and reasonably follow according to common experience and observation.

14. It is not sufficient to justify a verdict of guilty that there may be a strong suspicion of guilt and it is not sufficient that there be strong probabilities of guilt, if
2536 you believe such probabilities exist. The law requires proof by legal and credible evidence of such nature that when it is considered, it produces a clear undoubting and entirely satisfactory conviction of the guilt of the defendants. The burden of establishing guilt under this test is upon the Government. A reasonable doubt may arise from the lack of evidence as well as from the nature of the evidence.

15. The jury are instructed that it is incumbent upon the prosecution to prove the guilt of the defendants beyond a reasonable doubt. Nothing is to be presumed or taken by implication against the defendants; the law presumes a man innocent of crime with which he is charged. The defendants are not called upon to prove their innocence nor are you required to believe them innocent in order to acquit them. If the evidence leaves in your mind a reasonable doubt of the guilt of the defendants, you should acquit the defendants.

16. If there is one single fact proven to the satisfaction of the jury which is inconsistent with the guilt of the defendants this is sufficient to raise a reasonable doubt
2537 and the jury should acquit.

17. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right

to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

18. A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

19. The Court instructs the jury that certain testimony and stipulations are before you that Paul DeLucia was convicted of another offense and has served time in the penitentiary. This evidence was deemed necessary in
2538 order to present certain alleged circumstances concerning money and taxes. This evidence is not to be taken or considered by you as evidence of the crime charged in the indictment and you cannot consider this evidence even tending to establish any of the allegations of the indictment.

2539 20. If you believe from the evidence that there was a conspiracy as charged and it came to an end by the attainment of its object more than five years before the return of this indictment you will acquit.

21. Alias is a term used in legal proceedings to denote a second or further description of the person who has gone by two or more names. Paul DeLucia is not charged with crime because of the use of an alias and such use should not prejudice you in this case.

22. An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

23. A presumption is an inference which the law requires the jury to make from particular facts, in the ab-

sence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury are bound to find in accordance with the presumption.

24. The jury are instructed by the Court that, if they can reconcile the evidence in this case upon any other reasonable theory or hypothesis than that of these defendants' guilt, it is your duty to do so and acquit the
2540 defendants.

25. The burden is upon the Government to prove beyond a reasonable doubt and to a moral certainty that the defendants are guilty of the charges in manner and form as contained in the indictment.

26. If the jury believe, from the evidence, that any witness in this case has knowingly and willfully sworn falsely on this trial to any matter material to the issue in this case, then the jury are at liberty to disregard the entire testimony of such witness, except in so far as it has been corroboated by other credible evidence or by facts and circumstances proved on the trial.

27. And the Court instructs you further that, when the evidence is heard, jurors have the right to test its weight by their knowledge and experience and their judgment derived from experience, observation, and reflection. You are not bound to regard evidence precisely as given, but may consider its truth and weight by your knowledge of men, the affairs of life and the motives which influence persons. These are all proper and legitimate means of
arriving at the truth in determining the issues in
2541 this case.

28. It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judg-

ment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

29. You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

30. If you find evidence before you to indicate guilt or misconduct not alleged in the indictment as so limited by the Bill of Particulars just remember that these defendants are here to face only the charge as contained in the indictment as limited by the Bill of Particulars.

2542 31. The defendants, Paul DeLucia and Joseph I. Bulger, are charged in the fourth count of this indictment with entering into a conspiracy commencing about September, 1950, and continuing to the return of this indictment which was March 4, 1957. You are instructed that the acts or declarations of an alleged conspirator, done or made prior to the commencement of such alleged conspiracy or after its termination, are not admissible against his alleged co-conspirator and should not be considered by you in any manner whatsoever in determining the guilt or innocence of such alleged co-conspirator under this count in the indictment.

32. The Court further instructs the jury, that this is a criminal case, and the law in such cases is, that a defendant comes into court presumed to be innocent, and that pre-

sumption protects him until such time, if such time shall come, when the jury shall believe, from the evidence in the case, beyond a reasonable doubt that the defendant is guilty as charged in the indictment.

33. Each defendant has pleaded not guilty. This puts the burden of proving the charges in the indictment
2543 upon the Government, and you cannot find either defendant guilty unless from the evidence you believe him guilty of the offenses charged in this indictment beyond a reasonable doubt.

34. A reasonable doubt is what the term implies—a doubt founded upon reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means simply an honest doubt that appeals to reason and is founded upon reason.

35. If, after considering the evidence in the case you have such a doubt in your mind as would cause you or any other reasonable or prudent man or woman to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates is a reasonable doubt.

36. The Court further instructs the jury, there are two kinds of evidence, direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is
2544 usually given by witnesses who saw, heard or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if, when you went to bed at night, you saw the ground was bare of snow, and in the morning when you awakened, you saw the ground covered

with snow, while you had not seen the snow fall, nevertheless, you can infer from the evidence you see, that it has snowed during the night. That is an illustration of what circumstantial evidence is.

37. Circumstantial evidence in a criminal case is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendant, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find the defendant guilty.

38. The Court further instructs the jury, you have a right to weigh and examine the evidence closely and
2545 carefully in the light of the common knowledge and experience of mankind, and you have the right to take into consideration the common knowledge and experience of mankind in determining whether the evidence is reasonable or unreasonable, or probable or improbable, and in determining what weight it is entitled to receive.

2546 39. You must be governed entirely by the evidence that you have heard, the exhibits before you and the law as given to you in these instructions.

40. Neither by these instructions nor by anything that I may have said or done during this trial, do or did I intimate or wish to be understood by the jury as giving any opinion as to what the evidence is in this case, or as to what is not the evidence, or as to what the facts are in this case, or as to what are not the facts, or as to what I think should be the finding of the jury in this case. It is exclusively for the jury to determine the facts from the evidence in this case, and having done so, to apply to such facts the law as stated in these instructions.

41. The Court further instructs the jury, in connection with your determination of the weight of the evidence in this case, that the arguments of counsel are not evidence in this case.

42. You are the sole judges of the credibility of and the weight which is to be given to the testimony of the witnesses who have testified upon this trial.

2547 43. In weighing the testimony of each witness, you should give it careful scrutiny and consider all the circumstances under which the witness testified; his or her demeanor on the witness stand; the relation which he or she bears to the Government or to the defendants; the manner in which he or she might be affected by the verdict; his or her manner of testifying; his or her apparent candor and fairness; or lack thereof, reasonableness or unreasonableness of the story; the witness' apparent intelligence or lack of intelligence; the extent to which he or she is corroborated or contradicted by other credible evidence if at all; and in short, any circumstances that tend to throw light upon his or her credibility.

44. Applying the tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

45. It is not only proper but it is the duty of an attorney to object to the introduction of evidence which goes beyond and outside of the proper rules of evidence. When attorneys object, it is in pursuance of their duties as lawyers, and when the Court rules on those objections, it 2548 is in accordance with the law.

46. You will, therefore, not harbor prejudice against any attorneys who have objected to any evidence, nor draw any inference of desire for concealment because evidence has been ruled out. I can only assure you that my rulings

have been made in an effort to comply with the established rules of law and you will disregard any evidence which has been ordered stricken from the record.

47. You should not allow sympathy or prejudice to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. Nor are you to concern yourselves with the matter of punishment in the event that the defendants, or one of the defendants, are found guilty. The matter of punishment is for the Court alone. It is your duty to pass upon the guilt or innocence of the defendants. In that regard, you will take with you to your jury room such exhibits as it is proper for you to have.

48. The testimony of admissions made by the defendants should be cautiously received by the jury, since
2549 they are merely the impressions of a witness of what he has heard someone else say stated in his own language without the qualifications or restrictions, if any, the tone, manner or circumstances which attended their original expression.

49. If under all of the evidence there are two reasonable conclusions that may be drawn from the evidence, one of guilty and one of innocent, then under the law, if you may do so as reasonable men, it is your duty to adopt the conclusion of innocence rather than of guilt, and to find the defendant not guilty.

2550 50. The jury are further instructed that when the defendant interposed his plea of not guilty to the charges alleged against him, he put in issue every fact necessary to establish his guilt beyond a reasonable doubt. The burden of proof in this case is solely upon the prosecution and the burden of proof never shifts to the defendant; nor does the law require him to prove his innocence or present any evidence.

51. Preliminary to your being sworn to act as jurors in this case, you were examined by the Court and counsel as to your competency and qualifications to act as jurors in this case. As part of such examination each of you answered all questions put to you by the Court and counsel. Your answers showed that you were competent and qualified to act as jurors on the faith and truth of your answers. The answers you then made to such questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy, are as binding upon you now as they were then, and should so remain until you are finally discharged from further consider-
2551 ation in this case. It would be improper and unlawful for any of you to disregard the answers that rendered you competent jurors.

52. Now, there have been certain stipulations filed of record and recited orally for you in this case. When a fact is stipulated to by counsel, no evidence need be introduced in order to prove such fact and you must find, in accordance with a stipulation or agreement, as though the facts covered by it has been proved by the evidence. This applies to both oral and written stipulations.

53. During the course of the trial, certain conversations were admitted as evidence against some defendant only, and not against the other defendant. The Court instructs you to bear in mind the limited purpose for which these conversations were admitted, and to regard them as evidence against only those persons specified by the Court.

54. In deciding the question of whether the expenditure analysis as proposed by the Government properly reflects the receipt of taxable as opposed to non-taxable funds, you may consider the evidence, if any, of existence of a likely source of taxable income such as a trade or business.

2552 If you find such a source, you may properly conclude that the net income as shown by the Government's expenditure analysis sprang from that source or sources and is taxable. If there is no satisfactory evidence to identify a likely source of taxable income, you may nonetheless consider such evidence as there may be tending to show that the net income determined on an expenditure basis could not have come from any non-taxable sources such as gifts or inheritances or cash available from prior years and other such items as I have mentioned previously. And if you find that they did not come from non-taxable sources, you may properly conclude that they did come from an undisclosed taxable source.

55. Where relevant leads are not forthcoming, the Government is not required to negate every conceivable source of non-taxable funds, and if the defendant, Paul DeLucia, failed to supply information to the agents in that regard or if you find that he supplied a false explanation, you may take such a failure or falsehood into account.

2553 56. In determining whether or not the calculation of the Government is reasonably accurate, you may consider whether the Government has run down all reasonable "leads" suggested to the agents, tending to establish his innocence, and has explored all explanations, if any, advanced by the defendant or his representative during the investigation. Obviously improbable explanations would not be entitled to as much weight as plausible and reasonable explanations. If you should find that the Government's investigation has failed to refute what seem to you

plausible explanations, such failure may be considered by you in determining the validity of the starting point. If you are satisfied that all such reasonable leads and explanations have been exhausted or refuted this would be persuasive evidence which you could consider in determining whether the Government's calculation is reasonably accurate.

2554 57. With respect to the years prior to 1934, it is presumed that the defendant, DeLucia, has complied with the provisions of the Internal Revenue laws and has filed a return and paid his income tax in each of those years when he had a net income subject to tax. Evidence that he did not file a tax return for any one of those prior years may therefore be considered by you as an admission by him that he did not have a net income in excess of the amounts for which he would have been required by law to have filed a tax return. In that connection, however, I caution you that the defendant, DeLucia, is not charged with having violated the income tax law for any years other than for the three years mentioned in the indictment; namely, 1948 to 1950, inclusive.

58. The Government relies upon the cash expenditures method of determining correct net income in this case as to the tax evasion charges.

2555 59. This is a criminal case brought in this court by the return of an indictment by the grand jury of this district on March 4, 1957. The indictment contains a total of four counts or charges. In Counts 1, 2 and 3, Paul DeLucia is charged with willfully evading his income taxes and those of his wife, Nancy DeLucia, for the years 1948, 1949 and 1950. In Count 4, the defendants, Paul DeLucia and Joseph Imburgio Bulger, are charged with willfully and unlawfully conspiring to make false and fraudulent statements in a matter within the jurisdiction

of the United States Treasury Department, an agency of the United States. You will see, therefore, that there are two types of charges here. You will note that Paul DeLucia is a defendant and is charged in all four of the counts, and that Joseph Imburgio Bulger is a defendant and is charged only in the fourth count. In the following instructions, both types of charges will be defined and covered and the law with respect to the charges given to you.

60. Briefly, the cash expenditure method compares the total cash receipts and cash funds available of a
2556 person with his total cash expenditures during a specific tax period, which in this case would be on the calendar year basis, to determine if such person properly accounted for that year. It is necessary therefore, that the total cash funds available for expenditure by the person during a particular year must be determined. Credit must be given for all cash funds available from all sources: (a) Cash receipts, whether taxable or non-taxable, and whether reported or not reported; non-taxable receipts would be those from loans, inheritances, gifts, returns of capital, paid insurance claims or damage claims, and other such items received during the year; (b) all cash funds received from whatever sources, whether legal or illegal; (c) funds received from the sale of assets, or expended from prior accumulations of cash on hand at the beginning of the taxable year. By the above calculation, the total cash funds available of a person during a taxable year would be determined. In other words, this total represents the amount of cash he had available to spend.

61. Thereafter the system requires that the total
2557 cash expenditures made during the taxable year for all purposes, including without distinction: (a) per-

sonal or business expenditures; (b) deductable or non-deductible expenditures; (c) expenditures for assets or the accumulation of cash; (d) the reduction of liabilities; and (e) gifts, loans, annuities, et cetera, made.

62. Therefore the computation of corrected income for a given taxable year can be ascertained in the following manner:

63. 1. Starting with the year end balances of the taxpayer's total cash available, and adding to this his total cash expenditures during the taxable year, the figure arrived at then represents the total cash funds to be accounted for during the taxable year in question.

64. 2. From this figure is then substracted the following: (a) Total cash available as of the first day of the taxable year in question.

65. (b) Total current cash receipts during the taxable year, without regard to the taxable or non-taxable status of such funds. The figure now arrived at represents the taxpayer's corrected income for the tax year in question.

2558 66. 3. The corrected income is then further reduced by any proper cash or non-cash deductions permissible under the Internal Revenue Code for the particular year in question.

67. 4. The resulting figure now represents the taxpayer's corrected net income for the particular tax year.

68. If that alleged net income is greater than the net income shown in the taxpayer's return, then there has been an understatement of taxable net income.

2559 69. It is obvoius therefore that this system in order to be reasonably accurate must contain the following requisites:

70. (1) The total cash on hand figure as of the first day of the year must be determined with reasonable accuracy.

71. (2) All sources of cash receipts both taxable and nontaxable must be taken into account.

72. (3) All gifts, inheritances, loans and miscellaneous receipts and/or expenditures by the taxpayer must be accounted for and given effect to.

73. A beginning point for the computation of Possible Cash on Hand as of the first day of the first taxable year in question must be ascertained with reasonable accuracy.

74. Further the beginning point and the actual starting point (first day of the first taxable year in question) must be bridged by a complete analysis of the total cash receipts and total cash expenditures of the taxpayer during the interim period in order to definitely establish his available total Possible Cash on Hand as of the starting
2560 point for the computation of his Corrected Net Income.

75. The Government is not required to trace out all possible speculation that the defendant and his wife did not have some possible sources of cash receipts, or some possible cash expenditures which the investigation failed to disclose.

76. However, the Government is required to trace out all reasonable leads as to all possible sources of both cash receipts and expenditures, whether or not said receipts and and expenditures came from legal or illegal sources, or whether or not they would represent taxable or nontaxable receipts.

77. The Government is not required to be precise, but it is enough if the Government, although unable to determine the exact amount of cash funds spent or received from sources as indicated previously, can show beyond a reasonable doubt that the taxpayer's total Cash Available was insufficient to account for the total cash expenditures the defendant and his wife made. The burden rests originally on the Government to establish that it has properly taken into account all nontaxable funds.

78. In this case the Government has endeavored to
2561 prove that the defendant and his wife did not have more funds from nontaxable sources than the Government has allowed, and disclosed as a result of its investigation by tracing the financial and income tax return filing history of the defendant and his wife, Nancy DeLucia, and by introducing in evidence the defendant's own statements and statements of his wife as to income and occupation, as well as the defendant's own statements as to his financial status and personal resources in prior years. The evidence introduced by the Government of the defendant's and Nancy DeLucia's income tax return filing history and their financial history in years prior to these named in the indictment may be considered by you only for such light as it may shed on the innocence or guilt of the defendant DeLucia during the years named in the indictment. The question of innocence or guilt in prior years is not to be considered.

2652 79. In the first count of the indictment, the defendant Paul DeLucia is charged with willfully attempting to evade and defeat a large part of the income tax due and owing by him and his wife for the calendar year 1948 by making and causing false statements and representations to be made at a conference before officials, Internal Revenue Service, and at another conference before

Internal Revenue Service, which false statements concerned the alleged existence of a cash hoard in the amount of $300,000 allegedly kept by the defendant, DeLucia, in his home at 812 Lathrop Avenue, River Forest, Illinois, from December 25, 1943 until the date subsequent to August 13, 1947. It is alleged that such false representations were made for the purpose of concealing additional unreported net income received by the said defendant, DeLucia, during the said calendar year 1948, on which there was a tax due and owing to the United States in the amount of $75,201.14. It is alleged that the defendant has violated Section 7201 of the Internal Revenue Code of 1954.

80. In the second count, the grand jury charges the said defendant, Paul DeLucia, with making the same 2563 false statements and representations to officials of the United States Treasury Department, Internal Revenue Service, in a willful attempt to defeat and evade his income taxes and those of his wife for the year 1949 in the amount of $17,589.54, also in violation of the same statute referred to above.

81. In Count 3, the defendant, Paul DeLucia, is charged with willfully attempting to evade and defeat his and his wife's income taxes for the year 1950 in the amount of $35,555.88, in violation of Section 145(b) of the Internal Revenue Code of 1939, which is identical to the section of the law referred to in the first two counts. However, in this third count, the defendant, DeLucia, is charged with evading the income taxes due and owing by him and his wife by filing a false and fraudulent income tax return.

82. Now, with respect to the charge against the defendant Paul DeLucia for willful attempted evasion, that section of the Internal Revenue Code, in so far as you are concerned with it, reads as follows:

83. "Any person who wilfully attempted in any
2564 manner to evade or defeat any tax imposed, or the payment thereof, shall be guilty and punished in accordance with the requirements of the statute."

84. You will note that as to Counts 1 and 2 involving the years 1948 and 1949, the means of evasion alleged in the indictment are that the defendant, Paul DeLucia, made and caused to be made false statements and representations. In order to convict under those two counts, you must find beyond a reasonable doubt that the defendant, Paul DeLucia, made such alleged false statements in an attempt to evade and defeat his income taxes and those of his wife for said two years.

2565 85. You will recall the charges of the indictment with reference to the alleged crimes of income tax evasion set forth in Counts 1, 2 and 3, as I have just summarized them for you. As you are aware, the only defendant named therein is Paul DeLucia. Before you may convict the defendant, DeLucia, under Counts 1 and 2 of the indictment, it is incumbent upon the Government to prove beyond a reasonable doubt:

86. 1. That the defendant, DeLucia, filed or caused to be filed the income tax returns for each of the years in question.

87. 2. That the defendant, DeLucia, as to the years 1948 and 1949, willfully attempted to defeat and evade the income tax due and owing for said years by willfully making or causing to be made false statements and representations to the Revenue Service on or after September 1, 1954.

88. 3. That as to each of the years 1948 and 1949 income tax was owed in addition to that which he reported in the respective returns.

89. As to the year 1950, before you may convict the defendant, DeLucia, under Count 3 of the indictment,
2566 it is incumbent upon the Government to prove beyond a reasonable doubt, as I have said previously, that he filed or caused to be filed the income tax return in question; that income tax was owed in addition to that which he reported in the return; and that he willfully attempted to defeat and evade the income tax due and owing for that year by the filing of such return.

90. With respect to Counts 1, 2 and 3 of the indictment concerning the charges of willful evasion, the gist of the offense charged in each of said counts is the willful attempt on the part of the taxpayer to defeat and evade the tax imposed by the income tax law. The word "attempt," as used in this law, involves two things:

91. 1. An intent to evade or defeat the tax; and

92. 2. Some act done in furtherance of such intent.

93. The word "attempt" contemplates that the defendant had knowledge and understanding; that during each of the calendar years he had income which was taxable and which he was required by law to report; and
2567 that he attempted to evade and defeat the tax thereon, or a portion thereof by willfully failing to report all the income which he knew and it was his duty to state in his return for that year.

94. On the question of intent to evade, and just by way of illustration and not by way of limitation, there are certain matters which you could consider pointing to intent so far as tax evasion is concerned if you found they existed in this case. These are general illustrations: Concealment of assets, covering up sources of income, handling one's affairs to avoid the making of usual records, and any con-

duct the likelihood of which would be to mislead or conceal. And if the tax evasion motive plays any part in such conduct, the offense may be made out even though the conduct I have mentioned might also serve some other purpose.

95. The word "willful," and used in the income tax statutes, means with knowledge of one's obligation to pay the tax due and with intent to defraud the Government of that tax.

96. The Government is not required to prove the exact amount of the income tax as alleged in the indict-
2568 ment however, before returning a verdict of guilty, you must find beyond a reasonable doubt that the defendant, DeLucia, received some substantial amount of taxable net income over and above the amount reported, and that he willfully attempted to evade and defeat the tax on such additional taxable net income.

2569 97. You may not convict the defendant DeLucia under the first three counts because of the mere filing of an incorrect tax return by reason of honest mistakes, negligence or mere ignorance of the requirements of the tax laws.

98. If you find that there were any gains, profits, or income received by the defendant, DeLucia, during the years 1948, 1949 and 1950, which were not reported, it makes no difference as far as the question of taxability is concerned whether such income was lawfully received or unlawfully received inasmuch as both types of income are taxable and should have been reported.

99. If you find that a fraudulent return for the year 1950 was filed with intent to defeat a part or all of the tax and that this was done willfully, the crime is complete

as soon as the filing takes place. With respect to the years 1948 and 1949, if you find that false and fraudulent representations were made, as charged in the indictment, with intent to defeat a part or all of the tax and that this was done willfully, the crime is complete at the time the said false statements are made.

2570 100. The fourth count of the indictment charges that the alleged conspiracy between the defendants began on or about the month of September 1950. Evidence has been admitted bearing on the relationship and association of the two defendants prior to September 1950. Of course, mere association and acquaintanceship does not involve a person in a conspiracy. This evidence of prior acquaintanceship and association has been admitted in so far as the alleged conspiracy is concerned for whatever bearing it may have on the probability or improbability of the defendants subsequently entering into the charged conspiracy. It is for you to decide what weight, if any, such evidence has.

2571 101. In Count 4 of the indictment, the Grand Jury charged that the defendants, Paul DeLucia and Joseph Imburgio Bulger, willfully conspired together to commit an offense against the United States; namely, to make false statements and representations to the Internal Revenue Service. It is alleged that to effect the object of the conspiracy, the defendant, Paul DeLucia, was present in the office of the Intelligence Division, Internal Revenue Service, during a conference attended by others and that the defendant, Joseph Imburgio Bulger, gave testimony in the office of the Regional Counsel, Internal Revenue Service, at which time others were present.

102. The fourth count of the indictment charges that the defendants, Paul DeLucia and Joseph I. Bulger, conspired to commit an offense against the United States, to wit,

to knowingly and willfully make false statements and representations in a matter within the jurisdiction of the United States Treasury Department, Internal Revenue Service, in violation of Sections 2 and 1001 of Title 18, United States Code. You have heard testimony that
2572 representations were made on September 1, 1954 before certain officials of the Internal Revenue Service and, further, that the defendant, Bulger, in the company of the defendant, DeLucia's attorney, made certain statements concerning the counting of $300,000 before Assistant Regional Counsel Joseph B. King of the Internal Revenue Service. It is for you to determine from all the evidence in the case whether these statements and representations were true or false. With respect to whether or not these statements and representations were material or were made in a matter within the jurisdiction of an agency of the United States Government, that is a question for the Court to determine as a matter of law. I have determined that such statements and representations as were made to representatives of the Internal Revenue Service were made in a matter within the jurisdiction of a department and agency of the United States and, further, that such statements and representations were material to a matter then under consideration by the Internal Revenue Service. You need not and should not concern yourselves to any further degree with this matter of law. It remains, therefore,
2573 for you, ladies and gentlemen of the jury, to concern yourselves solely with the question of whether such statements and representations as were made to the officials of the Internal Revenue Service were true or false and whether the defendants, DeLucia and Bulger, conspired together for the purpose of making statements and representations which they knew to be false.

2574 103. The law of the United States upon which the fourth count is based reads, in part, as follows:

"If two or more persons conspire to commit any offense against the United States—in any manner or for any purpose, and one or more of such persons do any act to effect the object of a conspiracy, each shall be punished."

104. It is not necessary, under this conspiracy count, that the Government prove that any of the defendants committed any offense against the United States other than the conspiracy charge. The charge in the fourth count is that they conspired so to do.

105. The essence of the offense of conspiracy is the unlawful combination, confederation, or agreement to commit an offense against the United States. To "conspire" means to agree, to combine, to confederate.

106. It is not necessary, to constitute a conspiracy, that two or more persons should meet together and enter
2575 into an explicit and formal agreement for an unlawful scheme, or that they should directly, by word or in writing, state what this unlawful scheme was to be and the details of the plans by means of which the unlawful combination was to be effected. It is sufficient that two or more persons, in any manner or through any contrivance, positively or tacitly, come to a mutual understanding to accomplish the common and unlawful design charged and that one of the overt acts charged to have been committed be actually committed by one of the defendants in furtherance of the conspiracy.

107. You will observe that the Government and the grand jury have, in this indictment, charged two overt acts. An overt act means an act done for the purpose of carrying out the design, the unlawful purpose, and it must be

done by one or more members of the conspiracy, if it has been found that there was a conspiracy, and must be of such a character as appears to you to have been done in order to carry out the unlawful purpose.

108. Your inquiry should be first: Did defendants
2576 Paul DeLucia and Joseph I. Bulger conspire together to do the unlawful acts as charged in the indictment. Second: If they did so conspire, did any one of the conspirators thereafter, with the view of carrying out the object of the conspiracy, do one or more things as set forth in the list of overt acts alleged by the indictment. You will find that in the indictment. If they did so conspire together and they or either one of them committed at least one overt act toward accomplishment of the conspiracy's unlawful purpose, the offense of conspiracy is complete as to both the defendants, if you believe from all of the evidence and beyond a reasonable doubt that they did so conspire.

2577 109. A conspiracy is seldom capable of proof by direct testimony and may be inferred from the things actually done. It is enough if the minds of the parties meet and unite in an understanding way with the single design to accomplish a common purpose, which may be established by circumstantial evidence or by deduction from facts from which the natural inference arises that the overt acts were in furtherance of a common design, intent and purpose. Such a joining of intentions into a conspiracy may, and ordinarily only can, be established by reference from evidence of relationships and conduct in other probative circumstances.

110. In order to prove a conspiracy it is not necessary for the Government to show that two persons met together and entered into an explicit or formal agreement for an

unlawful scheme, or that they by words or writing directly stated what the unlawful scheme was to be and the details of the plans by which it was to be committed.

111. The mere fact that one defendant knew the
2578 other defendant during the period of time here in question and that they came in contact with each other is not sufficient to support a charge of conspiracy. Several men may be engaged in doing various acts, even of the same general character and in similar fields of activity, by which they may come in contact with each other without becoming conspirators.

112. Overt acts of the parties may be considered with other evidence and attending circumstances in determining whether a conspiracy exists, and where the overt acts are of a character which are usually if not necessarily done pursuant to a previous scheme and plan, proof of the acts has a tendency to show such pre-existing conspiracy, so that when proven they may be considered as evidence of the conspiracy charged.

113. When men enter into an agreement for an unlawful purpose they become agents for one another and have made a partnership in crime. The act of any one of such parties in furtherance of their common purpose must be considered to be the act of all and all are equally charged with it.

114. If you find that a conspiracy did exist among the defendants in this case, the act of any one of
2579 of the conspirators is chargeable to the other conspirator during the period that the conspiracy is alleged to have existed. However, once the conspiracy is terminated, the acts and declarations of one former conspirator or conspirators are in no way admissible as evidence against former co-conspirators, and I instruct you

that any acts or declarations of any defendant herein after the termination of the conspiracy and acts or declarations of any defendant herein prior to the beginning of the conspiracy (if you in fact find according to the instructions I have given you that there was a conspiracy as charged) shall be admissible only against the person doing such acts or making such declarations as you may find.

115. The Court instructs you that in charging the jurors in reference to the law of conspiracy, it is not the Court's intention in the least degree to give the jury any opinion as to whether or not there was a conspiracy entered into by the defendants, or any of them.

2580 116. If you find that the prosecution has proved an overt act, but has failed to prove beyond a reasonable doubt the prior unlawful agreement or conspiracy, it will be your duty to bring in a verdict of not guilty as to the fourth count.

117. The indictment charges that only two persons were in the conspiracy alleged in Count 4. One cannot conspire alone, so if you have a reasonable doubt about one defendant and acquit him, you must also acquit the other of the crime of conspiracy.

118. You are instructed that if you find that the facts assumed as the basis for the hypothetical questions have been established by the evidence submited at this trial, you may find the correct tax liability of the defendant DeLucia and his wife for the years 1949 and 1950 to be the same as set forth in the computations made by the Government's expert witness in response to the hypothetical questions.

119. The Government through the witnesses Paul Mahon and Andres Saldana has offered testimony concerning computations prepared by them from the exhibits

2581 and testimony previously received in evidence. It is to be understood by the jury that the testimony of these computations is offered and is to be considered by you, only as an explanation by the witnesses Mahon and Saldana as to what the exhibits show. The exhibits and testimony of the various witnesses upon which the witnesses' computations were based are controlling.

120. The witnesses Mahon's and Saldana's testimony pertaining to computations made by them is to be used merely for your convenience.

121. Ordinarily in the trial of cases witnesses are confined in their testimony to facts within their personal knowledge. They are not permitted to draw conclusions or express opinions. There is an exception to that rule, however, which is this: That when the points in issue are concerned with a particular subject matter with respect to which there are trained persons who have had special education, training and experience in particular fields, such persons are known as "experts" and because of their special education, training and experience are permitted 2582 to express opinions.

122. You are required, of course, to weigh and evaluate the testimony of an expert witness precisely as you weigh and evaluate the testimony of any non-expert witness. That is, you will consider the probability and reasonableness of the things to which the "expert" has testified, his interest in the outcome of the case, his education, training and experience, his standing in the profession or want of it, and the breadth of his experience in the subject matter which would enable him to arrive at a correct conclusion. In this regard you should ask yourself: Is this witness, as a matter of fact, an expert qualified by scientific education, training and experience to acquaint me with the scientific facts.

123. The Court further instructs you that you must keep in mind, in passing on the guilt or innocence of the defendant Paul DeLucia when you return to your jury room, that each of the four counts of the indictment constitutes a separate charge and each count of the indictment should be considered by you in arriving at the guilt or innocence of the defendant Paul DeLucia. Under
2583 the evidence, you must find the defendant guilty or not guilty as to each count of the indictment in which he is named as a defendant, and these instructions apply as to each count of the indictment, just as though the defendant were not charged in the other count, as though there were only one count in the indictment.

124. Under the evidence and these instructions you may conclude and so find the defendant Paul DeLucia is guilty or not guilty on any or all of the counts of the indictment.

125. The defendant Joseph I. Bulger is charged in only one count, Count 4, and you may find him guilty or not guilty only on that count.

2584 126. There have been admitted in evidence certain exhibits variously referred to as schedules or summaries. Strictly speaking, these exhibits are not actual evidence, but they were admitted as summaries of other evidence in the case and they are admitted only for your assistance and convenience in considering the other evidence which they purport to summarize. Exhibits of of this nature are permitted where they are based upon voluminous books, records or documents already in evidence, in order to assist you in determining the ultimate facts or results shown by such books, records or documents. But you are reminded that it is the books, records and

documents which are the evidence, and the summaries are admitted only to assist you in considering that evidence. For that purpose, you are entitled to consider them.

127. Now, I am permitting the jury to take with it to the jury room the indictment in this case. I do so, however, with the caution and admonition that the indictment is to be considered by the jury as no evidence against
2585 either defendant. The indictment is simply the formal charge made by the Government and must be considered by the jury in that light and in no other light.

128. In other words, the indictment is being given you for the purpose of informing you more at length as to the precise charges made.

129. Now, I will send with you the forms of the verdicts. One is:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, guilty as charged in Count 1 of the indictment."

130. I can't make out which is the original. Another verdict is:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, not guilty as charged in Count 2 of the indictment."

"We, the jury, find the defendant, Paul DeLucia, also known as—"

By The Clerk: Your Honor, these were set up in a different form.

2586 By The Court: Please put them back in order. They were set up in pairs, and not as duplicates.

131. All right, I will start over again. I am giving you two forms of verdict on each count. They are clipped together, only for convenience.

132. One is:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, not guilty as charged in Count 1 of the indictment."

133. The other one is:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, guilty as charged in Count 1 of the indictment."

134. On Count 2 I am giving you two forms:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, not guilty as charged in Count 2 of the indictment."

2587 135. And the other one:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Silva, guilty as charged in Count 2 of the indictment."

2588 136. The third one is:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, not guilty as charged in Count 3 of the indictment."

137. The other one:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi, guilty as charged in Count 3 of the indictment."

138. As to Count 4, I am giving you two verdicts:

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi and Joseph Imburgio Bulger not guilty as charged in in Count 4 of the indictment."

"We, the jury, find the defendant, Paul DeLucia, also known as Paul Ricca, also known as Paul Salvi and Joseph Imburgia Bulger guilty as charged in Count 4 of the indictment."

Now you will retire, ladies and gentlemen of the
2589 jury. That excludes you two alternates. You may
step out of the jury box now.

By The Clerk: Before they retire, we would like to swear in the Marshals in charge of the jury.

By The Court: Yes, but we will let the alternates go now.

Thank you very much.

(Whereupon the two alternate jurors were excused.)

By The Court: Just a word of advice. When do you do retire, after we have sworn in the staff, you can relax and wash up.

The first thing you should do is elect a foreman, who will preside over your deliberations. After you have reached your verdicts, he or she, the foreman, will sign his or her name on that or those verdicts that you have agreed upon, and then each and all of you other eleven jurors will please sign your names respectively on each or all of the verdicts that you have agreed upon, next following the foreman's name.

That is clear, isn't it?

You can begin your deliberations before lunch or
2590 you can have your lunch and then deliberate. It is
for your convenience.

I will say for everybody concerned, we are very grateful It has been a long trial and you have been wonderful. Which were all of the instructions given by the court before the jury retired to deliberate.

Swear in the staff please.

(Whereupon the Marshals were duly sworn.)

By The Court: This is the indictment I talked to you about, and these are the verdicts. You won't have much trouble in distinguishing them.

Thank you very much.

(Whereupon the jury retired to consider their verdict.)

2591 By Mr. Stewart: Your Honor, as I understand the practice over here, which is a little different from where your Honor comes, and that is the State Court, the objections to the instructions should be made known to the Court after they are read and before the jury is finally committed with the case, so that in case your Honor wishes to make any corrections you would have the opportunity.

But we have gotten along as well—

By the Court: Repeat that, will you, please? I didn't get that.

By Mr. Stewart: I understand the rule over here requires the defense to make any suggestions or objections to instructions immediately at this point, after your Honor has instructed the jury. If we should remain silent, Judge, then we would be out as far as raising any objections to the instructions are concerned.

We have gotten along so well in this case, I am quite certain that we can all combine, that is, your Honor and Mr. Barnett and the defense counsel, to show which instructions were offered and tendered by the Government

2592 and which instructions were offered and tendered by us, and we could make that record up later, if it is necessary.

Then based on that record, I will just make the general objection that if your Honor has not fully covered forms that have been tendered by us, we would like to preserve the objection to it without going over them and pointing out specifically because I gather that your Honor tried to incorporate just about all we gave except possibly a few things that your Honor differed with us on.

By the Court: Except this, Mr. Stewart and Mr. Barnett. In this case particularly, I handed each of you respectively your own instructions which I gave and which

I refused the day before yesterday, the day before the jury received them. I had hoped and I asked before I gave them to the jury if either lawyer had anything to say to me about the instructions or anything else in the matter before I called the jury out.

I had in mind then that I was willing to make corrections, consult with the lawyers' about the propriety, the completeness or incompleteness of the instructions, whether or not I have covered all the phases of it.

2593 I think I have covered every phase, and I think I have been very fair in the instructions. But I have no objection, in the light of this statement, to having you make any objection you want on the record.

By Mr. Stewart: Well, first, the one about whether you gave ours or not, that we can straighten out because your Honor has deliberately chosen and you have disagreed with us on a few points.

By the Court: That is right.

By Mr. Stewart: And the record can be made clear on that.

Now there is one thing your Honor said as you passed by, and that was new to me—possibly because I didn't study what the Government offered you or maybe the Government didn't prepare that part where you made a finding, a specific finding as a matter of law that certain things were material and there had been certain overt acts committed.

Did you tender that, Mr. Barnett?

2594 By Mr. Barnett: I tendered an instruction on materiality.

By the Court: I made none of my own.

By Mr. Stewart: That didn't appear to be in the copy I received, and just to protect the defense, I will say, with all due respect, that your Honor is wrong concerning the facts and your statement of the law is incorrect.

I think that will cover the point.

By Mr. Barnett: The instruction pertained to the question of whether or not the court should determine whether or not statements were material.

By Mr. Stewart: That is right, and we just want to preserve our objection.

By the Court: Concerned only with the question of—

By Mr. Barnett: Truth or falsity.

By the Court: Whether or not the representations were made, and not as to whether they were material.

By Mr. Stewart: That is right.

By the Court: I would have been very happy to hear you this morning on them.

By Mr. Stewart: If we are right in our understanding of the law your Honor has taken something
2595 from the jury which was improper. I want to preserve the point, that is all.

By the Court: That is all right.

By Mr. Stewart: One other objection I have is that your construction ran contrary to our theory, with all due respect, concerning the matter of source. I think our position is already in the record, and I just want to note it now as an objection to the instructions.

By the Court: That is reflected also in my refused instructions, so that is very clear.

By Mr. Stewart: I think we have our record preserved now.

We are agreeable to allowing all the exhibits to go into the jury room.

By the Court: Both sides agree?

By Mr. Barnett: Oh, yes.

By the Court: All right. We will send them all in.

By Mr. Barnett: Are there any deletions from any of the exhibits that you want?

By Mr. Stewart: None.

By Mr. Green: We have no objection to all the exhibits going to the jury room.

2596 For the record, we preserve our objection to the Court's finding in one instruction which was given as a matter of law to the jury, the representations concerned with materiality. We object to that, and also adopt Mr. Stewart's objection as to that instruction.

By The Court: What was that about materiality? I didn't get that.

By Br. Green: Well, the Court found as a matter of law in its instructions that the representations were material.

By The Court: That is the same.

By Mr. Green: The same objection Mr. Stewart made on that.

By The Court: Did you mean something else?

By Mr. Green: No.

By The Court: You are merely adopting Mr. Stewart's objection.

By Mr. Green: Yes.

By Mr. Stewart: We are finished now. We appreciate your Honor's courtesy and patience.

By The Court: I have heard a lot of law here and I want to learn some more.

Who has all the exhibits?

By Mr. Barnett: We have them, your Honor. I would like to say to your Honor that we of the Government

2597 also are very appreciative of the courtesy that you have given us during the course of the trial.

By The Court: Gentlemen, this is not polishing the apple. It is wonderful to try a case of this duration with so little quibbling and so much understanding and so much stipulation.

We could have wasted a year on figures and confused the jury and confused everybody, and probably in the end would have accomplished less than we have accomplished here.

So far as the defense is concerned, I don't think any delay or any quibbling on the figures would have accomplished more for them. I think they have it before the jury. It is clear, and I think more acceptable.

By Mr. Barnett: I agree, your Honor.

The jury retired to consider its verdict on May 28, 1958 at 11:40 A.M.

A copy of each of the following forms of instruction was delivered by counsel for DeLucia to the attorney for the prosecution and to the trial judge with the request that each be given, at the conclusion of the evidence. But the judge refused to give same and marked each refused and placed the following requests on file.

140. When the Government rests its case solely on approximations and circumstantial inferences of a net worth computation whether or not the proof is strong or weak depends on effective negation of reasonable explanations by the taxpayer or his attorneys inconsistent with guilt. Such negation must fail when the Government does not track down relevant leads, if any, furnished by the taxpayer, leads reasonably susceptible of being checked, which if true would establish the taxpayers' innocence. It is the duty of the Government not to convict but to see that justice is done.

Refused

141. Increases in net worth, if any, standing alone, cannot be assumed to be attributed to currently taxable income. The Government must prove a likely source from which the jury could reasonably find that the net worth increases, if any, sprang.

Refused

142. Government prosecutors have an affirmative duty to disclose material evidence which may be favorable to defendants in criminal cases.

Refused

143. Gambling does not give rise to a state of affairs presumed to continue once established. So if you believe DeLucia had income from Gambling in prior years, no presumption arises as to Gambling income in the indictment years, in the absence of evidence of Gambling in the indictment years.

Refused

144. During the period of time in which DeLucia was on parole, the law required him to comply with the rules of the Parole Board, including a regulation that he be not guilty of any crime or misconduct. During the period of parole the obtaining of money by means of gambling, or any other means in violation of the law, would have been regarded as a violation of parole. In the absence of any evidence to the contrary, it will be assumed that DeLucia, during said period, did not obtain money by means of gambling or any other unlawful means.

Refused

145. In this case you have heard testimony that DeLucia had the sum of about $300,000 at the times stated. The Government has made claim that such cash hoard did not exist. It therefor becomes the duty of the Government to

prove, by evidence beyond a reasonable doubt that such cash hoard did not exist. Opinions, conclusions and arguments will not take the place of evidence on this issue. The burden does not shift to the defendant.

Refused

146. You have heard the testimony of the defendant Bulger as given to the Revenue Service, about the money said by Bulger to have been seen by him in the possession of DeLucia. The general rule is that positive testimony of a witness, uncontradicted and unimpeached,—either by positive testimony or by circumstantial evidence—either intrinsic or extrinsic—cannot be disregarded and must control the decision of the jury. The jury cannot willfully or through mere caprice disregard the testimony of an unimpeached witness.

Refused

147. In arriving at the compromise and settlement agreement of the tax and penalty liabilities for the years involved the parties made concessions in order to arrive at a final agreement. There is a rule of law that neither party to a compromise agreement or consent judgment will be permitted to repudiate it. This policy requires that the Government, as well as DeLucia, be held to its agreement. The Government officials can not take a position which is to their advantage in one year and then change their position in a later year when they find it to their advantage to do so. The policy of the law has always been to promote and sustain settlements. The compromise and settlement ought not to be overthrown, even if the party complaining of it surrendered rights that the law, if appealed to, would have sustained.

Refused

148. The purpose of the statute authorizing settlements is to enable the taxpayer and the Government finally and completely to settle all controversies in respect of the tax liability for any previous taxable period and to protect the taxpayer against the reopening of the matter at a later date.

Refused

149. In prosecuting a taxpayer for filing false income tax returns, wherein the Government relies upon the net worth, value of assets of taxpayer during period under consideration standing alone is insufficient to support a charge that it represents currently taxable income. There must be proof of a likely source from which the jury can reasonably find that the net worth increase, if any, is attributable to currently taxable income.

Refused

150. If in considering the finances of DeLucia for 1948 you find that he expended more cash than he had available from income and you believe from the evidence that the cash spent in excess of income was from cash on hand, before 1948 began, the Government has no case as to 1948. This is true no matter where or how DeLucia might have previously obtained the cash. If you believe that DeLucia had previously obtained this cash in some manner illegal, that fact would be immaterial. DeLucia is not on trial for obtaining money from others illegally.

Refused

151. If there is no established figure showing source from which expenditures during year can be made, or complete lack of such a source, then there is no relevance to proof of expenditures during the year no matter how large the expenditures may be.

Refused

152. The words "available funds" are words that have an ordinary meaning and when used in relation to a computation to show that more money was spent than was available, the Government is required to show a listing of all the assets of the taxpayer at the beginning of 1948 for that year.

Refused

153. In income tax evasion prosecution wherein Government intends to show tax evasion by evidence of taxpayers receipts and expenditures, the burden is upon the Government to show, before resorting to another bookkeeping method, the inadequacy of the books employed by the taxpayer.

Refused

154. The Government must introduce evidence, other than its own computations, to discredit books and records of taxpayer such as proof of unrecorded transactions or internal evidence within books themselves showing incompleteness or inaccuracy.

Refused

155. The Commissioner of Internal Revenue has discretion to use a method other than the bookkeeping method regularly employed by the taxpayer only when such method employed by the taxpayer does not reflect the true income.

Refused

156. The Government must also show by evidence that the net worth method, or whatever other method is adopted, does reasonably reflect the income of the taxpayer.

Refused

157. An important part of a net worth computation is the beginning net worth, and a very important part of that computation is the cash on hand. If you believe that Paul DeLucia had enough cash on hand at the opening of

1948 to cover his cash disbursements in that year, or enough cash plus income as reported for 1948 to cover said disbursements, the proof must fail as to 1948. You should apply this test for the year 1949 and again for 1950. If the evidence, or the absence of evidence leaves you with a reasonable doubt concerning these important parts of the case for the Government the net worth method must fail as to the year you are considering.

Refused

158. The law clothes the defendants with the presumption of innocence. This presumption of innocence attends and protects the defendants all through the trial and extends to the deliberations of the jury. As you consider the evidence in your jury room, you should presume the defendants innocent.

Refused

159. It is necessary for the prosecution to show under all circumstances as a part of its own case that there is no innocent theory possible, which will without violation of reason, accord with the facts proven in the case. Circumstances are never to be presumed. Each fact making up a chain of circumstances must be proven beyond a reasonable doubt and if the prosecution fails to prove any one link making up the chain of circumstances you will find the defendants not guilty.

Refused

160. The Government has asked for a conviction in this case upon circumstantial evidence alone. You can not convict a defendant unless the Government has proved him guilty from the evidence beyond a reasonable doubt, by facts and circumstances, all of which are consistent with each other and with his guilt—and absolutely inconsistent with any reasonable theory of his innocence.

Refused

161. One fact proved may break the chain of circumstantial evidence upon which the inference of guilt of the defendants depends—and no matter how plausible all other circumstances may be, the charge must fail and you should acquit. A few facts or a multitude of facts proven all consistent with the supposition of guilt are not enough to warrant a verdict of guilty.

Refused

162. When a conviction is to be based upon circumstantial evidence or a chain of inferences, each and every link in that chain must exclude every other reasonable hypothesis. It is not proper to pile inference upon inference and presumption on presumption. While a conclusion as to an ultimate fact may be based upon an inference from circumstantial evidence, in reaching such conclusion, the inference as to the ultimate fact may not be based on an inference as to the existence of the circumstantial facts.

Refused

163. If the figures in the books kept for DeLucia are correct the books are sufficient to show net income. Of course the books on their face are not conclusive of the proper figures. If not accurate, whether by inadvertence or fraud, such fact could have been shown on behalf of the Government by other evidence. But in the absence of other evidence of inaccuracy—you will regard the books and the figures entered therein for expenses and upon which to calculate net income as substantially correct.

Refused

164. If you find that the determination by the agents to be arbitrary and excessive, it may not be reasonably held that Paul DeLucia is bound to pay a tax he does not owe. There is no duty on Paul DeLucia to establish, by evidence other than his returns, the correct amount of taxes that

lawfully might be charged against him. In other words, the burden never shifts to Paul DeLucia. Paul DeLucia is permitted by law through his lawyer to contest the findings and conclusions of the agents, without assuming the burden of proof.

Refused

165. Count I of this indictment relates to taxes for 1948. Count II relates to taxes for 1949. Count III relates to taxes for 1950. DeLucia is entitled to be considered as to each amount separately. He may be found guilty or not guilty as charged in Count I. He may be found guilty or not guilty as to Count II. He may be found guilty or not guilty as to Count III. If you apply the net worth method, in considering Count I, you must be able to find from the evidence the net worth of DeLucia at the beginning of 1948. Before the increased net worth method of proof is effective as to Count I the net worth of DeLucia at the beginning of 1948 must be clearly and accurately established by competent evidence. By this rule you must test the sufficiency of the evidence offered by the Government, if any, to establish DeLucia's net worth at the beginning of 1948. If the evidence leaves you with a reasonable doubt as to net worth of DuLucia at the beginning of 1948, or if you believe that the net worth of DeLucias at that time was greater than the amount claimed by the Government to have been shown, to such an extent as to cause you to have a reasonable doubt as to the accuracy of the claim of the Government, you will find DeLucia not guilty as to Count I. Then you will examine the evidence as to Count II separately and apply this test to the beginning of 1949. Then you will examine the evidence separately as to Count III and apply this test to the beginning of 1950.

Refused

166. If the opening statement is not substantially reliable the whole intricate house of cards used in the net worth method falls. For then—current expenditures for non-deductible purposes such as income tax, living, family expenses and investment in new and added assets, can just as reasonably be explained as coming from property, including cash, already owned. Consequently the amount of cash available and on hand at the opening of 1948, 1949 and 1950 assumes considerable importance. There must be a beginning and an end. The creature can not survive if headless, for the application of the cash expenditure method with neither a head nor a tail will not do.

Refused

167. In your study of the evidence to determine if possible the net worth of DeLucia at the beginning of 1948, if you believe from the evidence that there is no proof that the property admittedly owned by DeLucia at the beginning of 1948 constituted all the assets DeLucia had at that date, or if you believe that all the assets claimed by the Government were not shown to have been all the assets owned by DeLucia, you will find DeLucia not guilty as to Count I.

You will apply this same test separately to Count II and Count III concerning the years 1949 and 1950 separately.

Refused

168. When the Government relies upon the claim that the circumstances of increased net worth and expenditures at the end of 1948 over the beginning of 1948 to establish income tax evasion, the Government must produce evidence that excludes all possible or likely available sources of income or reserve cash from which the increased net worth, if any, and expenditures if any, could have been derived.

If you have a reasonable doubt from the evidence or lack of evidence as to whether the excess expenditures came from taxable income not reported or from a reserve of cash for 1948 you will acquit.

You will apply this same test to Counts II and III for the years 1949 and 1950, each separately.

Refused

169. DeLucia is not required to prove himself innocent by assuming the burden of overcoming any prejudicial effect of the mass of exhibits, estimates and conclusions which the Government has placed in the record, if put there upon any theory that it is up to the defendant to explain all of it away, as part of his burden to prove his innocence. There is no such burden.

Refused

170. As to the year 1948 the Government must prove by clear and convincing evidence that increases in net worth, if any, were not attributable from amounts received by the taxpayer in prior years. This same rule applies also to the year 1949 and the year 1950.

Refused

171. DeLucia is here to face trial on only the charges contained in this indictment, which relates to alleged fraudulent efforts to evade payment of income taxes.

Refused

172. On the question as to how the bookkeeping for Paul DeLucia was done, the critical test as to the sufficiency of the books on their face is whether they are sufficient to calculate the net income. If they are sufficient in this respect then the simpler the books the better. There is no prescribed detail as to just what books or how many must be kept. The question in each case must be decided and determined on its particular facts and in view of the nature, volume and complexity of the business.

Refused

173. At any time during your deliberations you may return one or more verdicts upon which you are able to agree. You may then retire again and resume deliberations as to the remaining verdicts.

Refused

174. If the jury cannot agree with respect to one or both defendants or as to one or any number of the counts in the indictment an opportunity will be given the jury to announce through the foreman such inability to agree. But the Court will not at any time require the jury to disclose the vote of the jury or any part of your deliberations. The law requires that your deliberations, including your manner of voting should be kept secret. The Court in furnishing these forms of verdict does not intend to indicate which verdict, if any, you should adopt or agree upon. Such decision, if made, is the sole responsibility of the jury, and each member thereof, under the law and your oath. No one under our law is allowed to question any of the jurors concerning your deliberations or the manner in which they are conducted in your jury room, upon retirement to consider your verdict. If you have obtained the impression or opinion that the result of your deliberations may be pleasing, or the opposite, to either side of the case, or to any one, you should be careful not to permit such impression or opinion to influence you in the least.

Refused

175. The Court instructs the jury that if the evidence is reasonably consistent with the innocence of the defendants you should promptly acquit them.

Refused

176. The court instructs the jury that to warrant the conviction of the defendants, each fact necessary to establish his guilt must be proven by competent evidence beyond a

reasonable doubt, and all the facts and circumstances proven should not only be consistent with the guilt of the defendants, but inconsistent with every other reasonable hypothesis or conclusion than that of guilt, to produce in your minds a reasonable and moral certainty that the defendants committed the offense as charged in the indictment.

Refused

177. Each circumstance essential to the conclusion of the guilt of any defendant should be fully established in the same manner and to the same extent as if the whole issue rested upon it.

Refused

178. The Government must show beyond a reasonable doubt that the alleged facts are true and that the alleged facts and circumstances are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused and incapable of explanation upon any rational conclusion or reasonable hypothesis other than the guilt of the accused. If all the facts and circumstances relied upon by the Government to secure a conviction can be reasonably accounted for upon any theory which is consistent with the innocence of any defendant then you should find for him.

Refused

179. The court instructs the jury, as a matter of law, where a conviction for a criminal offense is sought upon circumstantial evidence alone, the Government must not only show, by a preponderance of the evidence and beyond a reasonable doubt, that the alleged facts and circumstances are true, but they must be such facts and circumstances as are absolutely incompatible upon any reasonable hypothesis other than that of the guilt of the accused.

Refused

180. The court instructs the jury that, in order to warrant a conviction for crime on circumstantial evidence, the circumstances, taken together, should be of a conclusive nature and tendency, leading, on the whole, to a satisfactory conclusion, and producing, in effect, a reasonable and moral certainty that the accused, committed the offense charged; and it is the invariable rule of law that, to warrant a conviction upon circumstantial evidence alone, such facts and circumstances must be shown as are consistent with the guilt of the parties charged and as cannot, upon any reasonable theory, be true, and the parties charged be innocent; and in this case, if all the facts and circumstances relied upon by the Government to secure a conviction can be reasonably accounted for upon any theory consistent with the innocence of the defendants, then the jury should acquit the defendants.

Refused

181. Upon the subject of law enforcement, of course it is the duty of the jury to play an important function. The law is upheld and enforced in some cases by a verdict of guilty and in other cases by a verdict of not guilty, depending upon the evidence heard by the jury in the particular case. It is your duty to apply the law as defined in these instructions to the evidence. Such verdict, if any, you agree upon will be a proper enforcement of the law, guilty or not guilty.

Refused

182. The Court instructs the jury that the defendants come into Court and say not guilty, and when they say not guilty they are not called upon to name any special defense beyond just saying not guilty. Under the plea of not guilty they are entitled to the benefit of all testimony in the case that may inure to their benefit.

Refused

183. Many questions were put experts and answered on a hypothetical state of facts. In weighing the answers to such questions it is important for you to keep in mind the facts upon which said experts were called to give their opinions. If such facts were not in material respects the same as you find them to exist, after consideration of this case, such opinions would be necessarily weak, if not valueless.

Refused

184. When a mans' conduct may as consistently and as reasonably from the evidence be referred to one of two motives, one criminal and the other innocent, it is your duty to presume that such conduct is actuated by the innocent motive and not the criminal.

Refused

185. The indictment in this case was returned and filed on March 4, 1957. The statute of limitations runs on the crime of conspiracy charged in five years. The indictment alleges that the conspiracy was formed on or about September 1950. The Government need not prove the exact date, but must prove some date not longer ago than five years prior to the return of the indictment, plus the commission of an overt act, not longer ago than the same five years. In other words, the conspiracy, if any, as contemplated by the agreement as finally formulated, if any, must have been still in existence not longer ago than five years before the return of the indictment.

Refused

186. In general, in the absence of statutory prohibition, not involved here, Paul DeLucia, without abandoning his real name, may adopt or assume any name wholly or partly different from his name and by which he may become known and by which he may transact business and carry

on his affairs, unless he does so in order to defraud others, since it is the identity of the individual that is regarded and not the name which he may bear or assume.

Refused

187. A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose or a lawful purpose by unlawful means. This definition is limited by the indictment. As the indictment does not charge that any action was agreed upon to accomplish a lawful purpose by unlawful means, you should disregard this part of the definition of conspiracy.

The indictment charges that only two persons were in the alleged conspiracy. One can not conspire alone, so if you have a reasonable doubt about one defendant and acquit him, you must also acquit the other of the crime of conspiracy.

Refused

188. The essence of the crime of conspiracy is the intent and the agreement. In this indictment it is alleged that the object of the agreement was to make false, fictitious and fraudulent statements to the Internal Revenue Service. Unless it appears that these defendants had previously met and agreed upon this object, you will acquit them even if you believe one or the other, or both made false, fictitious and fraudulent statements to the Internal Revenue Service.

Refused

189. An overt act has been defined as an act open to view, public, apparent, manifest. An overt act is a necessary element of the conspiracy charge in this case. The overt act, if any, must be one or both of the overt acts charged in the indictment. The indictment charges the overt acts to be:

1. That on September 1, 1954, Paul DeLucia was present in the office of the Intelligence Division, Internal Revenue Service during a conference.

2. That on November 19, 1954, Joseph Bulger gave testimony in the office of Regional Counsel, Internal Revenue Service:

You may find from the evidence that Paul DeLucia was present at said conference and further that said presence constituted an overt act, or you may believe that said presence was not an overt act, depending on your belief, from the evidence, concerning other elements, to be defined by the Court in these instructions.

You may find from the evidence that Joseph Bulger gave testimony as alleged and that said act constituted an overt act, or you may believe that the giving of said testimony was not an overt act, depending on your belief, from the evidence, concerning other elements to be defined here by the Court in these instructions.

Refused

190. An overt act must be independent of the conspiracy, of you believe a conspiracy has been proved. An overt act can not be considered until it is found defendants were parties to the conspiracy alleged. An independent act by Paul DeLucia could not be considered as an overt act, nor could an independent act by Joseph Bulger be considered an overt act. The overt act, if any, must not be one of a series of acts constituting the agreement, if any, but must be a subsequent act, following a complete agreement or conspiracy and done to carry into effect the alleged object of the original agreement. If Paul DeLucia went to the Office of the Revenue Service and you find, from the evi-

dence, no evidence of a previous agreement with Joseph Bulger, you cannot regard such act of Paul DeLucia was an overt act.

Refused

191. No conviction can be had when the evidence is as consistent with innocence as with guilt. Conspiracies cannot be established by mere suspicion, nor does evidence of mere relationship between the parties, or association, show a conspiracy.

Refused

192. In order to establish proof that a defendant, or any other person, was a party to or member of some common plan or arrangement, the evidence must show that the plan was formed, and that the defendant, or other person who is claimed to have been a member, knowingly participated in the plan with the intent to advance or further some object or purpose of the plan.

In determining whether or not a defendant, or any other person, was a party to or member of a common plan, the jury are not to consider what others may have said or done. That is to say, the membership of a defendant, or any other person, in a common plan must be established by evidence as to his own conduct, what he himself said or did.

Refused

193. The defendant Joseph Bulger is not on trial charged with the crime of perjury. That crime would require rules of law not applicable here.

Refused

194. The fact that Joseph Bulger gave testimony before the Revenue Officials as alleged, that fact standing alone is insufficient. You must have evidence to convince you be-

yond a reasonable doubt that before giving testimony there existed the agreement or conspiracy charged. The conspirator, if you believe there was a conspiracy, must himself do the act, or authorize the act to be done.

Refused

195. An important and essential element of proof required as against Paul DeLucia in Counts one and two and as against both defendants in Count four, is that it is alleged that the testimony given by Joseph Bulger, concerning Three hundred thousand dollars, is false, fictitious and fraudulent. If you believe the statement to be true that should end the matter and you will find the defendants not guilty of the conspiracy charged in Count Four and you will find Paul DeLucia not guilty of the charge as made in Counts One and Two. If from the evidence, or lack of evidence, you entertain a reasonable doubt as to the truth or falsity of said testimony given the Revenue Service by Joseph Bulger you will find both defendants not guilty as charged in Count Four and you will find Paul DeLucia not guilty of the crime charged in Counts One and Two.

Refused

196. The criminal intent, if one exists, essential to the commission of a crime must exist when the act is done, it cannot be imputed to a party from an independent transaction. So if Paul DeLucia was present at a conference on September 1, 1954 as charged, and Paul DeLucia was there without any criminal intent and performed no act showing a criminal intent, criminal intent can not be imputed to Paul DeLucia from any subsequent transaction to which Paul DeLucia was not a party.

Refused

197. The Fifth Amendment to the United States Constitution guarantees that no one need to be a witness against himself. This right is intended to protect the innocent as

well as those guilty. Because a person might avail himself of that right, it does not follow that he should be regarded as guilty. His action should not be used in a court at all and a jury would have no right to be prejudiced against any person who might claim such right.

If you believe from the evidence that Paul DeLucia was invited by the Revenue Service to make explanation and Paul DeLucia, for any reason, elected to remain silent, or was advised to so remain, you are not to consider such failure to explain—any evidence whatsoever, as an indication of guilt. The law does not require a person who claims the privilege granted by the Fifth Amendment to explain his reasons.

Refused

198. If the testimony given by Joseph Bulger to the Revenue Service was not acted upon or accepted as true concerning the three hundred thousand dollars and the Government received no damage because of such testimony, an important element of this case, as to Counts One, Three and Four, is absent.

Refused

199. It is not every falsehood that makes a foundation for crime. The law is concerned only with a falsehood on a material matter. If the testimony of Joseph Bulger about the three hundred thousand dollars was on a matter immaterial, an important element of this case is absent.

Refused

200. Unless and until outweighed by evidence to the contrary, the law presumes that a person is innocent of crime or wrong; that a witness speaks the truth; that official duty has been regularly performed; that private transactions have been fair and regular; that the ordinary course of

business has been followed; that things have happened according to the ordinary course of nature and the ordinary habits of life; and that the law has been obeyed.

Refused

201. All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused, should be considered with caution and weighed with great care.

Refused

202. All evidence relating to any admission or incriminatory statement claimed to have been made by a defendant outside of court should be considered with caution and weighed with great care.

Refused

203. The rules of evidence ordinarily do not permit a witness to testify as to his opinions or conclusions. As so-called expert witness is an exception to this rule. A witness who by education and experience has become expert in any art, science, profession or calling may be permitted to state his opinion as to a matter in which he is versed and which is material to the case, and may also state the reasons for such opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves; and you may reject it entirely if you conclude the reasons given in support of the opinion are unsound.

Refused

204. The testimony of an accountant and any summaries or charts prepared by him and admited in evidence are competent for the purpose of explaining facts disclosed by books, records, and other documents which are in evidence. However such charts or summaries are not and of themselves evidence or proof of any facts. So if you should

find that such charts or summaries do not reflect facts and figures shown by the books, records, documents, and other evidence in the case, you must disregard them.

That is to say, such charts or summaries are used only as a matter of convenience, and unless you find that they are in truth summaries of facts and figures shown by the evidence in the case, you are to disregard them entirely.

Refused

205. The Constitution of the United States provides that no person should twice be placed in Jeopardy. It is unlawful to punish a person twice for the same offense. You have heard evidence to indicate that Paul De Lucia was convicted and has served time in the penitentiary for a federal offense. You should not allow this fact to prejudice you. Paul DeLucia is entitled to the same fair trial as you would afford a person not so convicted.

Refused

206. Taxes are imposed by Congress for the purpose of providing funds for the payment of debts of the United States and for making provisions for the general welfare. The taxpayer should be taxed on the actual amount of his income, which should be neither diminished nor increased by arbitrary or artificial methods of computation. Invested capital or property as such, or money received from the conversion of capital represented by something other than money is not taxable income. An addition to capital, as distinguished from income is not taxable income. Income is taxable for the year in which it is received in the case of a taxpayer on a cash basis. Statutes whose purpose is to procure payment of tax and to prevent frauds on the revenue and evasion of tax are construed to effectuate the purpose of their enactment. They are not intended to be

used for the punishment of crimes in general or to harrass or punish persons believed to have been guilty of general bad conduct, where proof of the commission of other crimes is not available.

Refused

207. This is a criminal case. Of course if there was no tax due the Government for the years alleged in the indictment Paul DeLucia is not guilty of any attempt to evade. If the Government does have a tax liability claim against Paul DeLucia the proper place to enforce that claim would be in the Tax Court. This Court expresses no opinion on the subject and this jury has nothing to do with civil tax claims for money. Your verdict one way or another has no bearing on any such question, which question may never arise.

Refused

208. The Court instructs you that the indictment in this case is not evidence of guilt and should not be so considered by the jury. And no juror should permit himself to be influenced against the defendants because of the fact that an indictment has been returned against them nor because of the nature of the charge made in the indictment.

Refused

209. The Court instructs the jury that you are not bound in this case by the opinion of any given or particular witness, and if, in your judgment, the opinion of any witness who may have testified in this case is not reliable or safe to follow either because of prejudice, bias, inability to give reason for such testimony, or other reasons, then the jury should give to the opinion of such witness such weight only as you may, from a consideration of all the evidence, believe it entitled to receive.

Refused

210. The jury are not necessarily bound to believe anything to be a fact because a witness has stated it to be so, provided the jury believe, from the evidence, that such witness is mistaken or has sworn falsely as to such fact.

Refused

211. No statement to any other transaction other than those contained in the indictment, upon which the defendants are being tried are to be considered by you as evidence of guilt in this case, and should be entirely disregarded by you in deliberation on the guilt or innocence of the defendants.

Refused

212. Preliminary to your being accepted and sworn to act as jurors in this case, you were examined by both Government and defendant as to your competency and qualifications to act as jurors in this case. As a part of such examination each of you answered all questions asked by both Government and defendant. Your answers showed you were competent and qualified to act as jurors, and the parties to this case accepted you as jurors on the faith of your answers. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy, are as binding on you now as they were then, and should so remain until you are finally discharged from further consideration of the case. It would be improper for you to disregard the answers that rendered you competent jurors.

Refused

213. The indictment in this case has been limited by the Bill of Particulars which as amended is as follows:

Amended Bill of Particulars

Now comes the United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, and files the following amended Bill of Particulars:

1. The object of the conspiracy charged in Count Four of the indictment was the making of false statements.
2. The false statements referred to and in respect to which proof will be offered are statements occurring on September 1, 1954, November 19, 1954, February 1, 1957 and February 28, 1957.
3. Details concerning the false statements made on September 1, 1954 and November 19, 1954 are contained in the two overt acts alleged in count 4 of the indictment.
4. The false statements occurring on February 1, 1957 and February 28, 1957, were made by Joseph I. Bulger to the December 1956 Federal Grand Jury in the United States Court House at Chicago, Illinois.

Refused

214. There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the defendants be proved guilty beyond a reasonable doubt, say so. If you believe from the evidence, or lack of evidence, that a reasonable doubt exists, or if you believe the defendants to be not guilty, say so by your verdict.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in the case.

The question before you can never be: will the Government win or lose its case? The Government always wins when justice is done, regardless of whether the verdict is guilty or not guilty.

Refused

215. In every crime there must exist a union of joint operation of act and intent.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

Refused

216. The Court has furnished you with a number of verdict forms for use upon reaching an agreement where all of you concur. If you all agree to find Paul DeLucia guilty of the crime charged in the first count, you will say by your verdict.

> **We the jury find Paul DeLucia guilty as charged in the first count of the indictment.**

If you all agree to find Paul DeLucia guilty of the crime charged in the second count of the indictment, you will say

> **We the jury find Paul DeLucia guilty as charged in the second count of the indictment.**

If you find Paul DeLucia guilty as charged in the third count of the indictment you will say:

> **We the jury find Paul DeLucia guilty as charged in the third count of the indictment.**

If you find Paul DeLucia guilty as charged in the fourth count of the indictment you will say:

We the jury find Paul DeLucia guilty as charged in the fourth count of the indictment.

If you find Paul DeLucia not guilty you will say by your verdict:

We the jury find Paul DeLucia not guilty.

Separate verdicts should be rendered as to each of the defendants and as to each of the four counts.

Joseph Bulger is not charged with the crimes alleged in the first three counts, so as to such counts no verdict is to be returned. If you find Joseph Bulger guilty as charged in the fourth count of the indictment you will say:

We the jury find the defendant Joseph Bulger guilty as charged in the fourth count.

If you find Joseph Bulger not guilty you will say by your verdict:

We the jury find Joseph Bulger not guilty.

Refused

217. In regard to the fourth count of the indictment, which is the conspiracy count, I instruct you that in cases of conspiracy, as in the other criminal cases, the defendants are presumed to be innocent until the contrary is shown by proof; and where the proof is, in whole or in part, circumstantial in its character, the circumstances relied upon by the prosecution must so distinctly indicate the guilt of the accused as to learn no reasonable explanation of them which is consistent with the defendants' innocence.

Although it is possible that the offense of conspiracy might be established by circumstantial evidence, to warrant a conviction in a criminal case, must be of such a character as to exclude every reasonable hypothesis but the guilt of the offense charged against the defendants, or, in other words, the facts proved must all be consistent with and point to their guilt only, and be all inconsistent with their innocence. The hypothesis of guilt must flow naturally from the facts proven, and be consistent with them all, in order to justify your verdict of guilty. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted. *Refused*

218. The defendants, Paul DeLucia and Joseph I. Bulger, are charged in the fourth count of this indictment with entering into a conspiracy commencing about September, 1950 and continuing to the return of this indictment which March 4, 1957. I instruct you that the existence of such a conspiracy cannot be established against an alleged conspirator by evidence or acts or declarations of his alleged co-conspirator, done or made in his absence. *Refused*

By agreement of the parties and upon order of the Court the charge to the jury is hereby identified in the record as follows: The charge to the jury is correctly reported by the official reporter and at the time said charge was read by the Court the paragraphs were not identified by number. Now the parties with the consent and order of the Court have numbered the paragraphs and by stipulation the Court hereby identifies the instructions given and refused as follows: The following paragraphs of the charge were given at the request of the Government and were all of the instructions given at the request of the Government: 1, 2, 32 to 126 inclusive. The following paragraphs of the charge were given at the request of the

defendant Paul DeLucia and were all of the instructions given at the request of DeLucia 3 to 31 inclusive. The defendant Bulger tendered form No. 31 which was given and tendered forms 217 and 218 which were refused, which were all of the forms prepared by the defendant Bulger. The instructions about the various forms of verdict were the result of agreement as were the forms.

Announcement by Court to jury concerning arrangements.

2599 And thereupon the following further proceedings were had herein, outside the presence and hearing of the jury:—

By The Court: Bring out the jury, please.

(And thereupon at 10:23 o'clock p.m. on said day, May 28, 1958, the jurors resumed their places in the jury box, and the following further proceedings were had herein:)

By The Court: Shall I say "Good morning", or "Good afternoon," or what?

Ladies and gentlemen, I am not dessed up for any special occasion; I just came from a formal.

Even I—I am not supposed to ask any questions, or to interrupt your deliberations.

It is my judgment—this has been a long case, and it is my best judgment to put you to sleep now overnight, and that you can resume your deliberations tomorrow morning.

Now, in doing that I want to put two deputy marshals at your disposal, so if you will just give them the messages they will talk to anybody you want for you and for your convenience.

You are going to a downtown first class hotel so 2600 there is nothing to be concerned with that.

And I want you to bear with me for a while and see if we can't work out some fair and just verdict.

Have you elected a foreman?

By The Foreman: I have been elected.

By The Court: You are the foreman?

By The Foreman: Yes, sir.

By The Court: I wish I could talk to you, but I can't. So that will be the order.

What I am afraid of is in talking or discussing with you, I don't want to leave any impressions, and I don't want to know what the score is, and I am not allowed to.

So I hope that you will have pleasant dreams, and I will see you in the morning.

Thank you very much.

We will take charge of the exhibits—put them in my chambers, and bring them back to you tomorrow morning.

Now, don't hesitate to use the phone through these two deputies, any way you want.

(And thereupon at 10:25 o'clock p.m. the jury retired to the jury room.)

2601 By The Court: (Addressing the Marshals) Did I say 10:00 o'clock tomorrow morning?

By The Marshal: I don't recall.

By The Court: If I didn't, I am saying it to you now.

And they can deliberate as soon as you bring them back, then they can deliberate.

I don't want anything until I get here, I will get here by 10:00 or 10:30.

By The Marshal: We will be here at 9:00.

By The Court: They can come back and deliberate as soon as they want to, but don't knock on the door until after I get there. And I don't want the lawyers and everybody hanging around here all night.

Is that all right?

By The Marshal: Yes.

By The Court: Mr. Barnett, I want you to figure out between now and 10:00 o'clock what questions I am permitted to ask. I want to ask them but I am afraid there

is no answer. And I don't want to discharge them at this stage until we have exhausted every possibility. And believe me, I don't want to know what is going on, and I don't want anybody else to know.

2602 By The Marshals: Good night, Judge.

(And thereupon at 10:27 o'clock p.m. on May 28, 1958, an adjournment was taken herein until the following day, Thursday, May 29, 1958, at the hour of 10:00 o'clock a.m.)

2603

Chicago, Illinois,
Thursday, May 29, 1958,
10:00 o'clock a.m.

Court convened pursuant to last prior proceedings had on May 28, 1958.

The Defendants, Paul DeLucia and Joseph Imburgio Bulger were each present

2604 And thereupon the following further proceedings were had herein, outside the presence and hearing of the jury:—

By The Clerk: Mr. Barnett, Mr. Stewart, Mr. Green, the Judge would like to see you in his chambers.

(Thereupon there was a discussion had in chambers between the Court and counsel, without the Reporter.)

By The Clerk: The Judge would like the Reporter to come into chambers.

(Thereupon the following further discussion was had and taken in chambers:)

By Mr. Stewart: Now, let the record show, your Honor, that in chambers, we have been discussing the advisability of giving an instruction which has been prepared and tendered by the Government and that I have the following objections to it:

"In a large proportion of cases, absolute certainty cannot be attained or expected."

I don't think that expression is necessary at this time because your Honor has already instructed the jury on reasonable doubt and that, as I see it, seems to sort of minimize that and it takes some things away that the
2605 defendants are entitled to.

Now, that is one of the objections. I am going to read again from the instruction.

"Although the verdict to which a juror agrees must, of course, be his own verdict—the result of his own convictions and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other."

I am going to stop there and say, it sounds to me like pretty much the same language as in the Allen case. It is pretty much the language your Honor has already incorporated in an instruction. I don't see any particular objection to that.

"You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must come; and there is no reason to
2606 suppose that the case will ever be submitted to twelve persons, twelve men and women more intelligent, more impartial, or more competent to decide it."

Now, I have several objections to that. The jury has nothing to do with the fact that the case must, at some time, be decided. As a matter of fact, there are some cases that are so uncertain and the minds can't meet and there are cases that result in a disagreement which results

afterwards in a dismissal of the case by the prosecution. If this is such a case, the jury has nothing to do with that now.

Then, to say "You are selected in the same manner, and from the same source," that may not be true. This was a special panel. We may later on get another panel. Suppose in this case, your Honor, we had been making objections to the source and we had a point that we made with reference to the fact that this source, the way the Clerk goes at it, with the Jury Commissioner, doesn't get a proper cross-section of the community. This jury may be the kind we have a valid objection to. It has nothing to do with the purpose of the instruction.

2607 I am going to read again from the instruction:

"and there is no reason to suppose that the case will ever be submitted to twelve persons, twelve men and women more intelligent, more impartial, or more competent to decide it."

That may not be true. * * * It is no business of the Court to say that there will never be twelve persons, twelve men and women more intelligent, more impartial or more competent to decide it. There may be something we discover late that we want to raise. It may be that something happened to make someone not impartial. It is not necessary to put that in the instruction.

I will go ahead:

2608 "With this in view, it is your duty to decide the case—"

By The Court: And that is the answer, "if you can conscientiously do so."

By Mr. Stewart: That is right, but you don't need the other part. I assume your Honor is going to take this the way it is. I want to make a record.

"In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases."

Now, it can't be one party or the other, in another case. Why talk about another case where the burden may be on the other side? Your Honor has already instructed the jury as to the burden of proof.

"In the present case, the burden of proof—the burden is upon the Government to establish the guilt of the defendants beyond a reasonable doubt, and if you are left in doubt as to the guilt of the defendants or either of them, such defendant or defendants, is entitled to the benefit of that doubt and must be ac-
2609 quitted."

Your Honor has already instructed on that.

"But, in conferring together you ought to pay proper respect to each other's opinions and reasons, with the disposition to be convinced with each other's arguments."

That follows pretty well in the Allen case. And then follows the language:

"And, on the one hand, if much the larger number of you are for a conviction the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the minds of so many men and women equally honest, and equally intelligent, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth,"—

There, of course, that follows the Allen case, but, I will say it may be possible somebody on there may be moved by prejudice and doesn't have an equal desire to arrive at the truth.

"and under the sanction of the same oath. And, on
2610 the other hand, if the majority of you are for acquittal, the minority should equally ask themselves whether they may not reasonably and ought to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction in the minds of their fellows."

If I remember, in the Allen case, they don't talk about distrust of evidence. That is another element that is being put in here, where your Honor is telling them at this late date that there is certain evidence which should be distrusted. You have no way of knowing what the jury might trust or distrust in these deliberations. We get to talking about a lot of things beyond the scope of the case.

Taking it all together, I assume the other defendants adopts the same objections.

By Mr. Green: I adopt the same objections.

By The Court: On the record, show further, in addition to the objections already made, that there were two other objections made which the Court sustained, and made
2611 made the following change: The Court struck out the words following "in a large proportion of cases" it struck out the following "and perhaps, strictly speaking, in all cases." Those words were stricken.

Then, again, the Court struck, in the same instruction, upon the objection of counsel, next following "twelve men and women more intelligent, more impartial, and more competent to decide it", the Court struck out the following "nor that more or clearer evidence will be produced on one side or the other." It goes on with: "With this in view" et cetera.

By Mr. Stewart: Will your Honor let the record show that those rulings were made before I started to make the objections for the record.

By The Court: That is right.

By Mr. Stewart: That is, the instruction was first tendered to your Honor with those parts in and your Honor took them out before I started to talk.

By The Court: That is right.

By Mr. Stewart: In other words, I don't want to be put in the position of agreeing to the amendment.

2612 By The Court: Oh, no. The objection was raised by Mr. Green on the second one because no evidence was offered and it was pursuant to his objection that I recognized and made the change.

By Mr. Stewart: We are glad to get anything that we can from your Honor.

By The Court: All right. Of course, it is possible they may reach a verdict. I don't know.

We will go into the court room.

(Thereupon the following proceedings were had in the court room.)

By The Court: Will you bring out the jury, please?

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury:)

By The Court:

Before I discuss anything with you, I would like to give you one more instruction, if I may.

The manner provided by our Constitution and laws for deciding questions of fact in cases as this is by a verdict of a jury. In a large proportion of cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must, of course be his

2613 own verdict—the result of his own convictions and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must come; and there is no reason to suppose that the case will ever be submitted to twelve persons, twelve men and women more intelligent, more impartial, or more competent to decide it.

Am I reading it clearly?

With this in view, it is your duty to decide the case if you can conscientiously do so. In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases. In the present case, the burden of proof—the burden is upon the Government to establish the guilt of the defendants beyond a reasonable doubt, and if you are left in doubt as to the guilt of the defendants or either of them, such defendant or

2614 defendants, is entitled to the benefit of that doubt and must be acquitted. But, in conferring together you ought to pay proper respect to each other's opinions and reasons, with the disposition to be convinced with each other's argument. And, on the one hand, if much the larger number of you are for a conviction the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the minds of so many men and women equally honest, and equally intelligent, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth, and under the sanction of the same oath. And, on the other hand, if the majority of you are for acquittal

the minority should equally ask themselves whether they may not reasonably and ought to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction in the minds of their fellows.

You will again retire to the jury room and continue your deliberations. Now, I am told that you have a question to ask. If, after some more deliberations, in the 2615 light of this instruction, you still want to ask the question, I would appreciate it if you would put it in writing and knock on the door again and I will be very happy to consider it.

Thank you very much.

(Thereupon the jury retired to deliberate further of their verdict.)

Counsel for the defendant prior to this discussion in chambers had tendered the following form of instruction and requested that same be given. But the Court refused to give such instruction.

219. You are instructed that although your verdict must be the verdict of each individual juror, and not a mere acquiescense in the conclusion of your fellow jurors, yet each of you should examine the questions submitted in this case with candor and with a proper regard and deference to the opinion of each other; it is your duty to decide the case if you can conscienciously do so; you should listen with a disposition to be convinced, to each others' arguments; if a much larger number are for conviction a dissenting juror should consider whether his or her doubt is a reasonable one when said doubt has made no impression upon the mind of so many other jurors equally honest, equally intelligent, with himself or herself. If, upon

the other hand, the majority of you now stand for acquittal, the minority ought to ask yourselves whether you might not reasonably doubt the correctness of a judgment which is not concurred in by the majority of this jury.

220. While the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure a unanimous verdict by a comparison of views, and by the argument among the jurors themselves. Each juror should listen with deference to the arguments of other jurors with a distrust of his own judgment, if you find a large majority of the jury taking a different view of a case from what you do yourself. It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his or her opinion of the case at that moment; or, that he or she should close his ears to the arguments of jurors who are equally honest and intelligent as himself or herself.

(Thereupon the Court gave attention to other matters on the call, one of which was interrupted by a knock on the door of the jury room:)

By The Court: Will you call in the lawyers, please?

(Thereupon counsel in the case were summoned.)

By The Court: I was handed this note. There was a knock on the door a second ago and they handed to the deputy marshal a note which reads, and which I will have identified:

"Your Honor:

"Do we have all the exhibits? We would like the 2616 Kefauver exhibit—if it is a Government exhibit.

Austin Nelson."

I suppose that is the foreman's name. Have it marked as the Court's Exhibit.

(Thereupon said note was marked Court's Exhibit, 5-29-58.)

By Mr. Barnett: Do you want me to get the exhibit?

By The Court: Yes, I want you to give them the exhibit. They want it and they are entitled to it.

(Thereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

By The Court: Let the record show that the Court has sent into the jury room the exhibit they called for.

(Thereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

By The Court: I just want to say to the lawyers and the parties that it is now pretty near quarter past 12:00. I am ordering that sandwiches be brought in to the jury room. You folks can be excused until 2:00 o'clock. I will not permit anything to happen before then. You can come back at 2:00 o'clock. And, relax.

(Thereupon at 12:10 o'clock p.m. a recess was taken to 2:00 o'clock p.m. of the same day.)

2619 And thereupon the following further proceedings were had, outside the hearing and presence of the jury:—

(Thereupon at the hour of 3:07 o'clock p.m. a knock was heard on the jury room door, and the following further proceedings were held herein:—)

By The Court: You say the jury knocked?

By The Marshal: Yes.

By The Court: Bring out the jury.

(Thereupon the following further proceedings were had in open court in the hearing and presence of the jury:—)

By The Court: Have you reached a verdict or verdicts?

By The Foreman: We have, your Honor.

By The Court: Will you please hand them to the Marshal?

(The Foreman handed the verdicts to the Marshal, who handed said documents to the Clerk.)

By The Court: Please read the verdicts.

By the Clerk: (Reading):

555A Verdict of not guilty filed as to Count IV of the indictment as to Paul DeLucia and Joseph Bulger.

559A Order entered discharging the defendant Paul DeLucia from further prosecution as charged in Count four of the indictment.

560A Order entered discharging the defendant Joseph Bulger from further prosecution as charged in Count four of the indictment.

557A Separate verdicts filed finding Paul DeLucia guilty
558A as charged in Counts I, II and III.

563A Motion of Paul DeLucia, defendant for new trial filed.

Now comes Paul DeLucia, by his attorney Wm. Scott Stewart, and moves for a new trial.

30 Proceeding on motion for New Trial.

Mr. Stewart: You will remember when your Honor invited us into chambers, we didn't want to do that, or I didn't, because that is a waste of time. We had hopes of winning the case. Remember, I said more or less
31 facetiously, I said I don't care; so long as you don't put one in there to find the defendants guilty, why, I will take your Honor's judgment. But at that time I had looked over what they had prepared, and I knew that there wasn't anything particularly dangerous.

There were some things I didn't agree with and that are argumentative, but you expect that when you are trying a case. You can't get everything the way you want it. But there wasn't in that batch of instructions the one I am going to read you now, and which should reverse this case alone because your Honor inadvertently took an issue from this jury that your Honor had no right to take away from this jury.

Your Honor will remember, I stood up after you finished with the instructions. I said I heard you give an instruction there that Mr. Barnett didn't give me. So if you want to look around and see who is to blame for this, it could be Mr. Barnett, but I am not interested in who is to blame. I am interested in the fact that your Honor gave this instruction. You will remember what it is.

32 At Mr. Barnett's request, you told this jury that it was none of their business whether the statements were material or within the jurisdiction of the Revenue people. You remember telling them that? You said that is a matter of law against the defendants, so don't concern yourselves with it.

That is error, reversible error, and you can't escape from it because Mr. Barnett himself put the issue up to the jury and the jury had to determine whether or not if it was false it had anything to do with the materiality of the case or the jurisdiction of the case.

So your Honor took [redacted] important things away from the jury, inadvertently, but you did it.

By The Court: That was immateriality? I recall—

By Mr. Stewart: That one on materiality.

By The Court: I recall the instruction, but what was the fact?

By Mr. Stewart: I will read it. It is a little bit long, Judge, but I have it printed here, and it wound up as No. 102:

33 "The fourth count of the indictment charges that the defendants, Paul DeLucia and Joseph I. Bulger, conspired to commit an offense against the United States, to wit, to knowingly and willfully make false statements and representations in a matter within the jurisdiction of the United States Treasury Department, Internal Revenue Service, in violation of Sections 2 and 1001 of Title 18, United States Code. You have heard testimony that representations were made on September 1, 1954 before certain officials of the Internal Revenue Service—"

Now, that is not true, Judge.

By The Court: That was on the conspiracy count?

By Mr. Stewart: It affects the whole case because they gave us a bill of particulars, Judge, and they said the only statements that we had to meet in here that were false was the one of September 1st where I went up there. We put a little play on, and the reason I asked for that play, Judge, was that I wanted our Honor to know what was in that

34 statement in detail and remember it. You will have it. It is in the record and it is printed up here and it is an exhibit.

Go back and look at it, and see if you can find one representation I made there. I was looking for information from them, and we were discussing a legal proposition. I was telling them they had no case and could never prove it, and if they thought they could make a case, go ahead and make it, and what are you going to do about the Kefauver testimony where the man said he had $300,000.00? They hem and haw around there.

Paul DeLucia doesn't open his mouth. You will find that I said there "Whatever I say here or Mr. Bernstein

says here is not binding upon Mr. DeLucia nor anything you fellows say here is not binding."

So that is specifically in there. Now, for your Honor, at the request of the Government, to call that a statement which might be false, that was an inadvertent error and just murdered us with this jury because it wasn't a statement at all.

35 Now take the other part, and here is your danger. I will read the rest of this instruction in a minute. Your Honor knows the difference between hearsay evidence and evidence that is not hearsay. We have a lot of hearsay in this case, but we couldn't do much about it.

You have two men on trial, and they are charged with conspiracy. As against Joe Bulger, they had him before the grand jury, and he said that Bernstein and Paul asked him, Bulger, if he wouldn't go over and tell this to the Revenue people about the $300,000.00. He said he didn't like to do it, but he was going to do it.

That is against Bulger, and that is the only evidence in the case that Paul DeLucia had anything to do with it, and that evidence was not admissible against Paul.

You don't have one line—and Mr. Barnett is going to have a chance to answer me—you don't have one line of legal evidence against Paul that Paul had anything to do with Bulger's statement up there in that Revenue office, not one. Yet your Honor, at the request of Mr. Barnett, classified this and tells them these are the two statements

36 for them to determine whether they are false or not, and you told the jury that all they had to do with it was determine whether they are false or not. But that isn't true because they still have the question of whether Paul made it or not, or whether he consented, and without any evidence, you shouldn't have told them that.

Let me finish this particular thing:

"You have heard testimony that representations were made on September 1, 1954 before certain officials of the Internal Revenue Service and, further, that the defendant, Bulger, in the company of the defendant DeLucia's attorney, made certain statements concerning the counting of $300,000.00 before assistant regional counsel Joseph B. King of the Internal Revenue Service."

Now here is what your Honor says:

"It is for you to determine from all the evidence in the case whether these statements and representations were true or false. With respect to whether or not
37 these statements and representations were material or were made in a matter within the jurisdiction of an agency of the United States Government, that is a question for the court to determine as a matter of law. I have determined that such statements and representations as were made to representatives of the Internal Revenue Service were made in a matter within the jurisdiction of a department and agency of the United States and, further, that such statements and representations were material to a matter then under consideration by the Internal Revenue Service. You need not and should not concern yourselves to any further degree with this matter of law. It remains, therefore, for you, ladies and gentlemen of the jury, to concern yourselves solely with the question of whether such statements and representations as were made to the officials of the Internal Revenue Service were true or false and whether the defendants, DeLucia and Bulger,
38 conspired together for the purpose of making statements and representations which they knew to be false."

Now, how could Your Honor determine that as a matter of law without knowing what was pending or what wasn't pending; what the action of the agency was before and what the action of the agency was after?

What your Honor has done—which is not like your Honor at all; you just got trapped into this thing and you got trapped into this instruction because it wasn't discussed. What you did, when I go up to the upper court, and I would rather tell it to your Honor first, I am going to say we had something decided against us in camera. We had the judge looking at something and then telling the jury that "I decided this as a matter of law," and not letting the jury see what the thing was at all. The jury should have seen that, and let them say whether that was material.

Supposing, your Honor, that those agents, who are experts in that business—now, I am not supposing anything that I can't infer from this record—Mr. King writes
39 back to Washington and says after investigating this thing and looking at Mr. Ruggaber's report where Paul DeLucia might have had $404,000.00 to spend, we have no net worth case.

If that is the fact, then you can't take from the jury an issue that I had a right to argue with the jury; that our problem came because we were being persecuted all the time, whether they have a case or not.

* * *

Argument for Government opposing motion for new trial.

49 Mr. Barnett: He complained about the fact that we, as part of our burden, that is to say, we failed
50 to meet our burden of showing that the 1950 return was timely filed, or rather, that the indictment was timely filed within the statute of limitations.

The statute of limitations in a case where the charge is wilful attempted tax evasion is six years from the date of the act by which the tax was attempted to be evaded.

Now the acts by means of which the tax was attempted to be evaded for the years 1948 and 1949 were those acts which consisted of false statements, the representations made by counsel in the presence of Mr. DeLucia, on September 1, 1954, and the representations made by Mr. Bulger at the instance of Mr. DeLucia on November 19, 1954.

In the first two counts of the indictment, it is charged that Paul DeLucia attempted to evade and defeat his tax for those years by means of these two acts; that is to say, by means of making and causing to be made false statements on these two occasions.

The indictment was returned on March 4, 1957, and
51 these false statements were made in September and November, 1954, well within the statute of limitations in so far as those statements are made.

The 1950 return of Paul DeLucia was admitted in evidence by stipulation of defendants. No foundation proof was required.

It bears on its face the Collector's stamp, "Received March 5, 1951, Collector, Internal Revenue, First District, Illinois."

If Mr. Stewart had any objection to that return, his time to make the objection was when the return was offered in evidence. Instead of that he stipulated it into evidence.

The return bears on its face the date of receipt by the Internal Revenue Service. The indictment was returned March 4, 1957, so it is within the six year period, beginning with March 5, 1951.

I might mention that the third count of the indictment alleges that Mr. DeLucia attempted to evade and defeat his taxes by means of filing a false and fraudulent return for the calendar year 1950, and that action occurred on
or about March 5, 1951. That is the language of the
52 indictment.

So there is no question about the statute of limitations being involved in this case. I think it is strange Mr. Stewart brings it up at this late date instead of attacking it earlier during the course of the trial.

Mr. Stewart spent some time on the, what we call, the Jencks case or the Jencks law, and eventually got around to admitting that there was legislation on the subject.

If your Honor recalls at the time that we had a discussion, the only time we had a discussion at all on the question of the Jencks matter and as to what records Mr. Stewart was entitled or not entitled to receive, was with reference to the documents prepared by former agent Thomas Smith.

After Mr. Smith had testified to having had a conversation with Mr. Paul DeLucia in February, I believe it was, 1956, the Government stopped the direct examination and turned him over for cross examination. At that time Mr. Stewart said that he wanted to delay his cross examination of Mr. Smith until a later point in the trial.

We had not, as of that time, put into evidence the
53 representation made on September 1, 1954. Mr. Stewart said that he wanted to wait until that had taken place before cross examining Mr. Smith; and that furthermore, he desired all reports and memoranda prepared by Mr. Smith.

As a result of that, the Government turned over to Mr. Stewart the memorandum which was made by Mr. Smith, which pertained to that conversation which took place in February of 1956. We turned over to your Honor a manila folder containing seven or eight documents which had been prepared by Mr. Smith, and asked your Honor to review them and determine whether or not the defense was entitled to them for the reason that they had any impeach-

ment value with reference to the matters to which Mr. Smith had testified.

We did so directly in accordance with the procedure that is set up by the statute in connection with these matters, by statute which was enacted subsequent to the Supreme Court decision in what is called the Jencks case.

After examining those documents, your Honor found one document in there which had been signed by Mr. Smith and which had been made a year or a year and
54 a half after the conversation, but which referred to what Mr. Smith's understanding was at the time he made out his original memorandum. You said that that possibly might have some bearing on the testimony that he had gives in the court room, and therefore you ordered us to turn that over to the defendants.

The balance of the documents, you said, had no bearing upon matters that would touch upon his credibility or could be used for impeachment purposes, and therefore withheld those documents from the defense.

The principal document that they appear to be interested in was a document called a review memorandum. If you will recall at the time Mr. Stewart argued about it after you had made your ruling, he said that he had been informed that that document, that in that document Mr. Smith had declined prosecution on the case.

I told your Honor that Mr. Stewart was apparently misinformed as to what the contents of the document were. I believe your Honor agreed that he was misinformed along that line. At any rate, the documents were withheld.
55 We have put those documents, both those that have been given to Mr. Stewart, that is to say, the one that we voluntarily gave, the one that the court withheld, we have put those in separate envelopes to be sealed with the Clerk of Court and transmitted to the Court of Appeals

in accordance with instructions of Section 3500, so the Court of Appeals has an opportunity to pass upon your Honor's ruling in connection with those documents.

Mr. Stewart asked that they be made openly a matter of record. That is not according to the statute, and I don't think there is any reason for following Mr. Stewart's suggestion along that line.

• • •

57 Mr. Stewart referred to the instructions and he, I take it—

By The Court: Yes, I am concerned with that one instruction. I feel, though, that that applied strictly to the conspiracy charge.

By Mr. Barnett: It did. • • •

By The Court: As he read the instruction to me and as I recall the instruction now, and I spent an entire night going over the instructions, I felt then and I feel now—

58 if I am wrong, you point it out to me—that that instruction pertained to the materiality of the $300,000.00 in the conspiracy charge, and I held in the instruction that that was a matter for the Court.

In any event, they threw the conspiracy charge out of the window, so that has no more application. Where has it any application to the other counts in the indictment?

By Mr. Barnett: Your Honor, I view that instruction in the same manner that you do. It was offered in connection with the conspiracy count. It referred to the fourth count. The entire thing is in connection with the fourth count.

• • •

59 By The Court: That is why I gave it because I felt it applied only to the fourth count.

By Mr. Barnett: The only thing that your Honor removed from the consideration of the jury was the question

of whether it was material and whether it was a matter within the jurisdiction. I have a volume here of law on that subject. The Seventh Circuit and the Supreme Court have universally held that the question of materiality and the question of whether a document, whether a statement, is within the jurisdiction of an agency is a matter of law for the court to determine.

I don't think there is any question about the propriety of this instruction.

• • •

60 Mr. Stewart complains that at no point did Paul DeLucia ever say anything or was connected with anything in connection with the statements that were
61 made in September and November of 1954. But it stands uncontradicted in the record that Paul DeLucia was present when such representations were made by his counsel, made to the members of the Internal Revenue Service.

It stands uncontradicted that Eugene Bernstein with a power of attorney authorizing him to do anything that the taxpayer himself might be able to do did hold a conference with Mr. King, did represent the taxpayer there, did represent that the taxpayer had the $300,000.00 cash on hand and did present to Mr. King the person and testimony of Joseph I. Bulger with respect to that counting of the money.

So it seems to me that from an entirely logical standpoint the hand of Paul DeLucia was exercised in the making of such representations as were made. It is a legal axiom that the attorneys who are performing the services for him, in the conduct of that performance for him are his agents, and that their acts are attributable to him.

• • •

65 By The Court: The jury heard your statement about the $300,000.00.

By Mr. Barnett: I was coming to that, your Honor.

By The Court: And they signed three verdicts that it wasn't there.

66 By Mr. Barnett: Three times they said he was guilty of that charge. The question of whether or not Bulger was a willing or unwilling participant may well have been the matter that they considered in excusing him from the conviction.

In light of that comment, your Honor, I move that the motion for new trial be denied and that we proceed to sentence.

By Mr. Stewart: I would like to submit this written brief, your Honor. There are some matters in there that I didn't touch on in my oral argument. I will give Mr. Barnett copies.

Brief for Defendant in suppart of motion for new trial.

566A

I.

As to Rule 29, Motion for Acquittal, see Vol. 4, p. 232 §§ 2221 to 2225 Federal Practice and Procedure, by Wm. W. Barron. This Honorable Court may enter judgment for the defendant not withstanding verdict or the Court may grant a new trial. § § 2223, 2224.

II.

It is respectfully suggested that each count be examined separately. Count IV is out of the case by virtue of a verdict of Not Guilty and judgment thereon. Counts I and II require proof of false statements within the Statute of Limitations. Count III is based upon an alleged false return.

III.

Mr. Barnett said in argument to the jury (Tran. 2160, Vol. 22).

> So, fundamentally, the key to the entire case is the truth or falsity of that story about the $300,000.00. The reason for that is this: If that story is true, we do not belong in this court room. If that story is true, Mr. DeLucia could have spent the money that he did spend in 1948, 1949 and 1950 out of that $300,000.00 hoard, and therefore it would not be taxable income to him during those years.
>
> On the other hand, if that story is false, as we contend the evidence shows that it is, then Mr. DeLucia, having explained that the source of the funds in 1948, 1949 and 1950 came from that $300,000.00, then his explanation is false, the income must have been derived from taxable income, that is, the disbursements in 1948, 1949 and 1950 must have been derived from taxable income received by him during those years.

Mr. Barnett unduly narrowed the issue, but if the jury accepted his challenge the jury found against the Government by its verdict on Count IV. With no proof of falsity as to $300,000, Counts I and II are barred by Statute of Limitations.

Your Honor instructed the jury as follows:

> 5. If you find that the testimony of Joseph Bulger given before the Revenue Service Officials as to about $300,000 observed by him in the hands of DeLucia, stands uncontradicted by any other testimony in the record and the testimony of Joseph Bulger so given on this point is not inherently improbable or contrary to any facts stated to justify the jury in disregarding such testimony on that question, the jury cannot disregard such testimony willfully or through mere caprice.

The jury by its verdict must have found that DeLucia had $300,000 as available cash. This alone destroys the theory of the Government and ruins the net worth method.

IV.

As to Count III on Statute of Limitations this indictment was returned March 4, 1957. It alleges that "on or about the 5th day of March 1951" DeLucia filed and caused to be filed a return for 1950. If the fact be that this return was filed the day before or two days before the Statute of Limitations has clearly elapsed. There is no proof on the subject, except a rubber stamp on Ex. 22 (Trans., 456, Vol. 5). No witness testified as to when that stamp was placed on the return or when the return was filed. See *Clark* v. *Commissioner*, 253 F2 745. The date to be considered is the date DeLucia signed the return, which date is unknown to your Honor because of failure to prove.

V.

The Statute of Limitations at the time was three years. In September of 1954 it was made five years. A nice legal question arises as to whether a case once dead could be revived by Congress. But if we apply the five years here the proof fails. There are cases holding that the Government has six years in which to collect and other cases to the effect that no statute runs on fraud. But we do not believe such rules apply to a criminal prosecution. But see *U.S.* v. *Waldin*, 253 F2 551, 558. The burden of proving affirmatively that the crime was committed within a period not proscribed by the applicable Statute of Limitations is on the United States. *Az Din* v. *U.S.*, 232 F2 283, 287; *U.S.* v. *Schneiderman*, 106 FS 892. Put in issue by plea of not guilty. See cases cited 253 F2 559. This matter

of the Statute of Limitations was submitted to Judge Knoch as a preliminary motion. It is now submitted to your Honor on the evidence. In this connection, at the request of the Government your Honor gave the following instructions:

84. You will note that as to Counts 1 and 2 involving the years 1948 and 1949, the means of evasion alleged in the indictment are that the defendant, Paul DeLucia, made and caused to be made false statments and representations. In order to convict under those two counts, you must find beyond a reasonable doubt that the defendant, Paul DeLucia, made such alleged false statements in an attempt to evade and defeat his income taxes and those of his wife for said two years.

85. You will recall the charges of the indictment with reference to the alleged crimes of income tax evasion set forth in Counts 1, 2 and 3, as I have just summarized them for you. As you are aware, the only defendant named therein is Paul DeLucia. Before you may convict the defendant, DeLucia, under Counts 1 and 2 of the indictment, it is incumbent upon the Government to prove beyond a reasonable doubt:

86. 1. That the defendant, DeLucia, filed or caused to be filed the income tax returns for each of the years in question.

87. 2. That the defendant, DeLucia, as to the years 1948 and 1949, willfully attempted to defeat and evade the income tax due and owing for said years by willfully making or causing to be made false statements and representations to the Revenue Service on or after September 1, 1954.

88. 3. That as to each of the years 1948 and 1949 income tax was owed in addition to that which he reported in the respective returns.

89. As to the year 1950, before you may convict the defendant, DeLucia, under Count 3 of the indictment, it is incumbent upon the Government to prove beyond a reasonable doubt, as I have said previously, that he filed or caused to be filed the income tax return in question; that income tax was owed in addition to that which he reported in the return; and that he willfully attempted to defeat and evade the income tax due and owing for that year by the filing of such return.

99. If you find that a fraudulent return for the year 1950 was filed with intent to defeat a part or all of the tax and that this was done willfully, the crime is complete as soon as the filing takes place. With respect to the years 1948 and 1949, if you find that false and fraudulent representations were made, as charged in the indictment, with intent to defeat a part or all of the tax and that this was done willfully, the crime is complete at the time the said false statements are made.

So it will be seen that your Honor adopted the Government theory *i.e.* (a) that there must have been false statements as to Counts I and II, (b) that the crime in Count III was complete on filing. But there exists no proof of the date of filing.

VI.

At the request of the Government your Honor gave the following instruction:

102. The fourth count of the indictment charges that the defendants, Paul DeLucia and Joseph I. Bulger, conspired to commit an offense against the United States, to wit, to knowingly and willfully make false statements and representations in a matter within the jurisdiction of the United States Treasury Depart-

ment, Internal Revenue Service, in violation of Sections 2 and 1001 of Title 18, United States Code. You have heard testimony that representations were made on September 1, 1954 before certain officials of the Internal Revenue Service and, further, that the defendant, Bulger, in the company of the defendant, DeLucia's attorney, made certain statements concerning the counting of $300,000 before Assistant Regional Counsel Joseph B. King of the Internal Revenue Service. It is for you to determine from all the evidence in the case whether these statements and representations were true or false. With respect to whether or not these statements and representations were material or were made in a matter within the jurisdiction of an agency of the United States Government, that is a question for the Court to determine as a matter of law. I have determined that such statements and representations as were made to representatives of the Internal Revenue Service were made in a matter within the jurisdiction of a department and agency of the United States and, further, that such statements and representations were material to a matter then under consideration by the Internal Revenue Service. You need not and should not concern yourselves to any further degree with this matter of law. It remains, therefore, for you, ladies and gentlemen of the jury, to concern yourselves solely with the question of whether such statements and representations as were made to the officials of the Internal Revenue Service were true or false and whether the defendants, DeLucia and Bulger, conspired together for the purpose of making statements and representations which they knew to be false.

With all due respect, your Honor by this instruction took from the jury the following contested issues:

(a) Whether any statement at all was made by DeLucia to the Revenue Service.

(1) On September 1, 1951 DeLucia kept his mouth shut. His lawyers made no statement of fact, they merely sought information.

(2) On November 19, 1957 DeLucia was not present. There is no legal evidence in the record that DeLucia had anything to do with that said by Joe Bulger.

There is evidence that Joe Bulger told the Grand Jury that DeLucia asked him to appear and testify before the Revenue Service, but that was hearsay as to DeLucia.

(b) The indictment alleges that the statements were not only false, but were material and within the jurisdiction of the Revenue Service. Your Honor decided such questions and deprived DeLucia of a jury trial on these two vital elements.

Now we respectfully ask—how did your Honor arrive at such conclusions? Did your Honor examine the report made by Agent Smith and others to determine what action, if any, was taken by the Revenue Service on the statements. If so, your Honor made use of evidence not available to DeLucia.

(1) What may have been material is a mixed question of fact and law. Your Honor had no right to take this issue from the jury.

(2) The materiality or lack thereof of the statments would depend upon what influence, if any, the statments had on the Service. The jury could know nothing of this without the report denied to us.

(3) Even if your Honor had a right (which we do not concede) to decide this question of materialality as a matter of law—DeLucia had a right to also examine the

evidence upon which your Honor based this conclusion. We have been denied a hearing on this subject. The contents of the report denied us can not be buried in a sealed envelope, it must have been used. If your Honor did not use the report, then your Honor ignored important evidence.

VII.

Now if your Honor will again examine *Jencks* v. *United States,* 353 U.S. 657 it will be seen that we were entitled to have the report made by Revenue Agent Smith. In fact the Government should have put the report into evidence as a part of its case in order to show the materiality, or lack thereof, of the statements. Your Honor relieved the Government inadvertently by assuming the burden and deciding for the Government as a matter of law. See *Bergman* v. *U.S.,* 253 F2 933.

VIII.

Your Honor will remember that Revenue Agent Klein was recalled (Trans. 694, Vol. 7) and said:

> Mr. Stewart: Q. Referring to the conversation you had with Mr. DeLucia, which you testified to yesterday, and that took about three hours in your office, during that time did you ask Mr. DeLucia if the cash you were talking about as being on hand at any particular period, opening and closing, was all the cash that Mr. DeLucia possessed or had?
>
> A. I did not.
>
> Q. You weren't concerned in that?
>
> A. No, it didn't affect me.

Your Honor will remember that Agent Mahon said (Trans. 1294, Vol. 14):

> Mr. Stewart: You are assuming that he paid honestly on every cent he made?
>
> A. That is the only inference I can make, that the man filed the proper return.

Your Honor inadvertently bolstered this testimony with the following instruction at the request of the Government.

> 57. With respect to the years prior to 1934, it is presumed that the defendant, DeLucia, has complied with the provisions of the Internal Revenue laws and has filed a return and paid his income tax in each of those years when he had a net income subject to tax. Evidence that he did not file a tax return for any one of those prior years may therefore be considered by you as an admission by him that he did not have a net income in excess of the amounts for which he would have been required by law to have filed a tax return. In that connection, however, I caution you that the defendant, DeLucia, is not charged with having violated the income tax law for any years other than for the three years mentioned in the indictment; namely, 1948 to 1950, inclusive.

Your Honor must know now upon further reflection that presumptions have no place in the case as against positive contrary evidence. Mr. Gardner (Trans. 945) destroyed all of this presumption business and the whole net worth theory by putting thousands of dollars in the hands of DeLucia. Mr. Barnett sought to recover by showing that the Italian Village went bankrupt, but such evidence did not preclude the fact that DeLucia had cash available beyond his reported income. The Village may have lost but DeLucia could have gotten his money back, or he could have had more.

Speaking of $1,800,000 Agent Ruggaber said (Trans. 500, Vol. 5):

> Mr. Stewart: Q. . . . Paul DeLucia could have gotten 100 per cent of the money so far as you are concerned? Is that right?
>
> A. He could have.

So here, your Honor must know that the Government witnesses destroyed their starting point. There is also testimony about $500,000 put up as security.

Your Honor, at the request of the defense correctly instructed the jury as follows:

> 9. If you believe from the evidence that the Government agents have ignored or excluded funds which DeLucia had available in addition to those which the Government included in its computation and the funds ignored or excluded are sufficient to cover any deficiency shown, you will find the defendant not guilty.

Yet, inadvertently at the request of the Government your Honor allowed the Government to offset this damaging evidence by the following instruction:

> 54. In deciding the question of whether the expenditure analysis as proposed by the Government properly reflects the receipt of taxable as opposed to non-taxable funds, you may consider the evidence, if any, of existence of a likely source of taxable income such as a trade or business. If you find such a source, you may properly conclude that the net income as shown by the Government's expenditure analysis sprang from that source or sources and is taxable. If there is no satisfactory evidence to identify a likely source of taxable income, you may nonetheless consider such evidence as there may be tending to

show that the net income determined on an expenditure basis could not have come from any non-taxable sources such as gifts or inheritances or cash available from prior years and other such items as I have mentioned previously. And if you find that they did not come from non-taxable sources, you may properly conclude that they did come from an undisclosed taxable source.

This argumentative instruction may have been good in the *Holland* case, 348 U.S. 121, but it is not applicable to the facts here. Your Honor inadvertently destroyed the requirements of the law that there must be positive proof of a starting point and a likely source.

IX.

Your Honor must know by now that the Government expert figures are of no value when it appears that they have ignored the available cash shown by Mr. Gardner, Mr. Ruggaber and others. The desperation of the experts was shown when they excluded the loans made by Bennett as available cash. The Government was obliged to produce Bennett or account for his absence. Not having produced Bennett your Honor must conclude that Bennett would have contradicted the theory of the Government.

X.

Your Honor must know that after the Government settled with DeLucia it should not be permitted to take a position contrary to that settlement.

XI.

Your Honor must realize the significance of the absence of any effort to collect money from DeLucia for 1948, 1949 and 1950. He would no doubt have paid any claim, reasonable or unreasonable.

XII.

It must be obvious that this case is an example of persecution. Mr. Barnett, as fair as he would wish to be, is more or less helpless. The orders come from Washington, as was said to the Revenue Agents on September 1, 1954. Mr. Barnet must prosecute, as best he can, regardless of the facts. He must do this, or resign. Your Honor, must be drawn into the net which encompasses the prosecution, or your Honor must now assert the independence of the judiciary vital to our Government. We appreciate that it takes considerable personal courage to render a decision opposed to ideas generated by prejudice. We must rely upon that courage in your Honor. Without such courage our Government fails. The easy way is to send us to the Court of Appeals. We arrive there with the approval of the verdict by your Honor. Of course your Honor should not approve this verdict unless after consulting the concience of your Honor you really believe that the verdict is in accordance with the law and is supported by the evidence. Equality before the law is engraved over the temple of the Supreme Court. If we are unable to secure equality before the trial judge because the trial judge may wait for the higher courts to enforce our rights this Government of ours is in desperate straits. There is no reason we know of to prevent us from clinging to the hope that the trial judge will be just as careful as the Supreme Court to protect the citizen from persecution by the powers of officials.

We request your Honor to hold that the Government has no case, which the officials must surely know. It remains to be seen if this be a Government of men or of laws.

We have written this brief to supplement our argument, in order that your Honor might make an appraisal of the fundamental principles involved. We have some knowledge of the responsibilities of your Honor. We have hope that

the law and justice will prevail, at this level. Your Honor must keep in mind that considerable importance will be granted by upper courts to the decision of your Honor. At present it is the responsibility of your Honor. We trust that we may have been of help to guide your Honor to a just decision which must be that DeLucia has wrongfully and illegally found guilty by a jury confused as to the issues and not properly informed as to the law. Your Honor should have thrown the case out at the conclusion of the evidence for the Government, but your Honor did not anticipate that we would rest. Having rested, we trust that we have emphasized and disclosed the weaknesses of the case for the Government.

Any one error committed should be sufficient to reverse if your Honor decided to enter judgment. A combination of the errors should surely reverse. As your Honor must know by judicial notice of records in this court the plan of the Government is to deprive DeLucia of citizenship and then deport him. To that end the Government is in need of two convictions. One has been obtained in the New York case. The Government needs this conviction in order to carry out its plan. We trust that your Honor will agree that it is important, not only to the defendant, but to our form of government that this conviction be not permitted without due process of law. The responsibility now rests upon your Honor to make a just decision upon the law and with due process. Such decision can only be contrary to the plan of the Government officials and in favor of the defendant, regardless of any opinion your Honor may hold concerning the defendant as a person. If this Government is to survive there is not one law for the guilty and another law for the innocent. We must all be equal before the law. When the day comes that the administration of the law depends upon the persons involved we are all in danger.

We ask that your Honor not approve of the verdicts and set them aside. If this must mean a new trial we stand ready to meet that when and if it comes. Eventually we hope to see the day when the officials not only perceive that they have no case, but they must realize that we are blessed with courageous trial judges unwilling to surrender concientious oaths in order to join in a studied plan of persecution. We trust that our confidence in your Honor is not misplaced. A great deal is at stake in the decision to be made as your Honor must know.

XIII.

With all due respect your Honor committed reversible error in instructing the jury after it had retired. *Allen* v. *U.S.*, 164 U.S. 492. See *Trans.* p. 2604, Vol. 27.

• • •

Statement made by Court in answer to points made on motion for new trial.

67 By The Court: The jury has found defendant Paul DeLucia, also known as Paul Ricca, guilty on three counts.

Defendant's own sworn testimony negatived his defense of his alleged $300,000.00 hidden cash. The jurors unequivocally manifested their disbelief by their three signed guilty verdicts.

There is no inconsistency between the guilty verdicts for unlawful tax evasion and the not guilty verdict under the conspiracy charge.

The jury might well have rejected the latter count under the Court's instructions for the lack of conspiracy between the two defendants or the expiration of the statute of limitations or sympathy or any other reason that they may have had in their minds.

I feel that the argument on the instruction on Count 4, if it hadn't been limited and confined to Count 4 in specific terms, might have had merit. But having been limited
68 entirely to Count 4, and the jury having found both defendants not guilty on Count 4, it is of no consequence now as to what effect the instruction had upon them, although I still believe—and would give it again if called upon—that it is a perfectly sound instruction to give to the jury, pointing out the materiality of the very basis upon which the jury must pass, not as to whether the $300,000.00 was or was not there, but as to whether it is material to the issues in the case.

Accordingly, the motion for new trial will be overruled. There will be judgment on the verdict.

By The Court: The silence which the defendant chose to maintain throughout his trial was at his own peril. Not one word was uttered in mitigation of his offense. I anticipated that.

In the hope of winning an acquittal by creating a reasonable doubt, it was argued that the moneys expended by the defendant could have been procured by him in previous years from illegal extortion, gambling, business racketeering, et cetera.

True, that spurious theory might have raised a legal inference, but the jurors ignored it. After a guilty verdict, such contention cannot mitigate but must aggravate the offenses.

It is the brand of criminality, brazenly advanced in open court, that has a tendency to demoralize our youth, corrupt our adults, and disgrace our nation as dissolute and lawless. It has irreparably menaced our general welfare, and is an alarming threat to our people.

Admittedly, the defendant has flagrantly violated the laws of his adopted country, since his entry under an alias. He was convicted and given the maximum sentence of ten years for extortion. After his release from prison,

and while on parole, he defrauded the Government of taxes for three successive years.

In spite of all that, the Court cannot follow completely the recommendation of the Government. I want to give the defendant the benefit of a separate finding on each of the counts so that if this Court is reversed on one count or two counts, the defendant may have the benefit of that particular sentence. I am still tempering justice with mercy here.

I sentence the defendant to three years on the first count, three years in the penitentiary on the first count, and a fine of $5,000.00; three years on the second count and a fine of $5,000.00; three years on the third count and a fine of $5,000.00, to run consecutively.

That will be the order.

581A Judgment entered as follows:

Defendant committed for 3 years and to pay a fine of $5,000 on each count. Sentences to run consecutively.

Notice of Appeal.

582A Name and address of appellant, Paul De Lucia, 1515 Bonnie Brae, River Forest, Illinois.

Name and address of appellant's attorney, Wm. Scott Stewart, Chicago Temple, 77 W. Washington Street, Chicago 2, Illinois.

Offense, Violation of Section 7201 of Internal Revenue Code of 1954; 26 United States Code 7201 and violation of Section 145 (b) Internal Revenue Code of 1939; 26 United States Code 145 (b). Concise statement of judgment or order, giving date and any sentence, the following order was entered on June 12, 1958 in case No. 57 CR 154 by Judge Julius Miner:

Arguments heard and concluded. Motion of deft Paul De Lucia for a new trial is overruled and denied. Order deft committed for 3 years and fined $5,000.00 on Ct 1; deft committed for 3 years and fined $5,000.00 on Ct 2; deft committed for 3 years and fined $5,000.00 on Ct 3, the sentence of imprisonment on Ct 2 to run consecutively to commence at the termination of and follow the sentence imposed on Ct 1, the sentence of imprisonment on Ct 3 to run consecutively to commence at termination of and follow the sentence imposed on Ct 2, and the fines imposed on each of Cts 1, 2 and 3 shall be cumulative. On motion of deft the bond heretofore filed on the indictment to stand in full force and effect as bond pending appeal.

582A Defendant Paul DeLucia's Notice of Appeal filed June 17, 1958. Clerk's certificate of mailing attached thereto.

Certificate of District Court Clerk

United States of America,
Northern District of Illinois—ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify and transmit as part of the transcript of record on appeal in the cause entitled: *United States of America,* vs.

Paul De Lucia, etc., et al., No. 57 CR 154, the following, to wit:

The Clerk's file copy of the transcript of proceedings had before the Honorable Julius H. Miner, Judge, on May 5, 8, 9, 12, 13, 14, 15, 19, 20, 21, 22, 23, 26, 27, 28 and 29, 1958, and filed by the Official Court Reporter on June 5, 1958 in four (4) volumes;

Documents filed in three (3) sealed envelopes on June 13, 1958, as follows:

A document submitted to the Court by the United States of America at the close of the direct testimony of Special Agent Thomas Smith and submitted to the defense by his Honor Judge Julius Miner;

Government files submitted to the defense by the Government after the direct testimony of Special Agent Smith, Internal Revenue Service, Chicago, Illinois;

Government documents submitted to his Honor Judge Julius Miner by the United States of America at the close of the direct testimony of Special Agent Thomas Smith, which have been reviewed by Judge Miner and have been denied to the defendant;

The Original Exhibits filed June 20, 1958, to wit:

Defendant's Exhibits;

A-1 Paul DeLucia Books of Accounts Journal
A-2 Ledger
B-1 Analysis of Receipts & Disbursements by months for years September, 1947 thru December, 1949
B-2 Analysis of Receipts & Disbursements by months for year 1950
B-3 Annual Recapitulation—Source of Funds for years, 1947, 1948 and 1950

C Summary of Income Adjustments thereto and Commissioner's adjustment to other—for 1953 thru 1943

C-2 Certified copy—Ninety Day Letter to Paul DeLucia 5-1-45

C-3 Certified Copy—Ninety Day Letter to George E. Browne 3-5-45

C-4 Certified Copy—Ninety Day Letter to Frank Nitto —deceased—5-1-45

C-5 Certified Copy—Ninety Day Letter to Louis Campagna—5-1-45

D Printed Transcript of Conference held on 9-1-54 present T. N. Smith, Stonesifer, Scholz, Bernstein, Stewart & DeLucia

E Printed Transcript of conference on 11-19-54—present—King, Ruggaber, Smith, Bernstein and Bulger

F Printed (Partial) Transcript of Keaufer Committee hearing

G-1 Decision Rendered #33383, on Gift Tax Matter of Louis Campagna

G-2 Ninety Day Letter to Paul DeLucia 1-11-55, re Donee & Transferee Liability

Filed among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 17th day of July, 1958.

(Seal) Roy H. Johnson
Clerk

By Gizella Butcher
Deputy Clerk

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No. 745

Office-Supreme Court, U.S.
FILED
MAR 3 1959
JAMES R. BROWNING, Clerk

In the
United States Court of Appeals
For the Seventh Circuit

No. 12399

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. PAUL DE LUCIA, Defendant-Appellant.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable Julius H. Miner, District Judge.

APPELLEE'S APPENDIX.

R. TIEKEN,
United States Attorney.

JOHN PETER LULINSKI,
WILLIAM A. BARNETT,
Assistant United States Attorneys,
Of Counsel.

The Scheffer Press, Inc., Chicago, Illinois—10-13-58—50

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APPENDIX.

1-227 * * *

228 Chicago, Illinois,
Friday, May 9, 1958,
11:00 o'clock a.m.

Court convened pursuant to adjournment.

Present:

Mr. Barnett
on behalf of the Government;

Mr. Stewart
Mr. Green
Mr. Burns
Mr. Bernstein
on behalf of the Defendants.

And thereupon the following further proceedings were had herein:—

By the Clerk: No. 57 CR 154, United States of America v. Paul DeLucia and Joseph Imburgio, Bulger. Case on trial.

(Thereupon a witness was sworn by the Clerk.)

229 By Mr. Barnett: Before we start, I would like to know what is going on. I have received no notice of a motion. I would like to know what is going on.

By the Court: I don't know either.

By Mr. Stewart: I have several motions. One is to restriet the Government in the opening statement and I have to make a showing of fact with reference to the situation in the case on that.

And, part of my reason is that we have a full set of books that we deem accurate and I am putting on the witness who supervised and opened and kept those books and he could testify to them.

And, then, your Honor, there has been a settlement made with the Government. I have no doubt Mr. Barnett knows about it, but I want it in the record and I am going to argue from that that they have no right to go back of the period of the settlement; that the settlement was approved by the Tax Court and it is binding on both sides and that is concluded, certain facts are concluded.

Now, there is still another reason that I have for
230 making this showing. The net worth method, as your Honor knows, is an effort on the part of the Government to prove their case by circumstantial evidence, that is, very briefly, the accountant's work and the Government's witnesses will describe it to your Honor. As I find it described in the reported cases, they endeavor to show an open worth of assets at the beginning of a certain year in the indictment and then they show the closing worth and then they show the amount of income reported by the taxpayer and the taxes he paid and then they make the claim—if they can make it—that the taxpayer has increased in wealth beyond what he would have if he had paid his full taxes, or something like that. I put it clumsily.

But, it is a circumstantial method of proof and the Supreme Court has spoken on it in the Holland case and I have it here. I am going to ask for the privilege of reading from it but I though possibly it would be better to put my facts in first.

I am going to conclude, after I put in my evidence, by asking your Honor to not allow them to use the net
231 worth at all. If they do use it, the Holland case and other cases state that there is a certain obligation on

the part of the Government agents before they are entitled to use the method at all, or even after they decide to use it, they must follow leads which have been given by the taxpayer, if it is reasonable to do it, and investigate those leads and either accept what the taxpayer has informed them of or, if they got the information about the leads and if they ignore the leads, the law books seem to say that your Honor, as a judge, should just take those leads as being truthful and if they upset the circumstantial case, why, then, they have no case.

So, with those things in mind, if we had just an ordinary run of cases or if we were over in court, say in the State court and we were about to try a murder case and I wanted to eliminate certain things from the knowledge of the jury which would come first, in the way of an opening statement, I would probably stand up as a lawyer and give your Honor my notion of what the facts are, but, this is a case which requires expertness and I understand your Honor has had some experience along that line. I am not very good at it.

By the Court: I haven't, but I am willing to learn.

232 By Mr. Stewart: All right. I make no claim as to knowledge with reference to accounting or bookkeeping. I have to depend on people who have studied it, and, Mr. Bernstein is familiar with the case and I would like to make a showing to your Honor.

We have prepared some analysis and some statements and I have had them printed up. I have given this morning, to Mr. Barnett, a number of copies of that so that he can have them and, as I have mentioned to their expert here, I said, "We may have put down some expenditures that are in excess of the ones you have."

I mean, in other words, we are trying to get such facts in this case. And, after I put in the evidence, then your Honor will hear me as to whether or not they might use the net worth method.

Now, supposing your Honor rules against me. Your Honor will have a better understanding of the case and other objections will have come up during the trial and you will know better what the foundation of our position is.

233 Now, I have got this Holland case here and I will read that to you after we examine the witness, if you permit that examination.

234 I think after reading the Holland case, I could stand here and take the position that the Government has to do this for your Honor; that they must show that our books are inaccurate, are not to be relied upon before they are entitled to use the net worth method. But I am going further than the law requires me to go.

If I understand this case correctly, your Honor, I don't believe they have a case. Now the sooner we can find that out, the better.

Before your Honor can pass on whether they should use the net worth method or not, in any of these cases you read, you will find they consider the books of the defendant, that is, the Government must consider them, and then after the Government considers them, they do have a right in some cases to just reject them and say they won't rely on them, they won't have anything to do with them. But that can't be done in an arbitrary manner, and your Honor can always review that decision.

You see, the case must be decided with reference to the facts in the particular case, and you can't rule, with all due respect, you can't rule with any intelligence un-

235 less you know the books that we have. These books have been submitted to the Government, and they are familiar with them.

When I was down endeavoring to make this stipulation, we had three conferences, and I could have easily gotten into a quarrel down there, and then we would have ac-

complished nothing. We didn't want to burden your Honor about all the different things that we talked about, but I gather from my conversations there that they were just going to ignore our books or not use them, and I had to wait until we got into court.

Now, I want to put them in. I want to put in the expert analysis that has been made, and also, your Honor, the Government has, according to our stipulation, put in a number of parole reports.

The reason the Government wanted to put them in, of course, is very evident if you look at the reports because the Parole Board required Mr. DeLucia to make a report each month as to what his expenditures were, what his income was, and the Government has those reports. They obtained them from the proper agency, and we have agreed that they are accurate and they are here in
236 evidence.

Now, through my expert we have made an analysis, and your Honor doesn't need to look through all those reports covering a period of years. Your Honor will have before you a printed analysis of those reports. Then if the Government—they have their experts and they have a copy of this, and they can go over them.

Maybe we can save a great deal of time by taking up a little time now and acquainting the Court with the situation. It is in the absence of the jury, and I can't see how anybody can be harmed by it.

By the Court: Have I a right to anticipate the course of procedure to be followed by the Government? Have I a right to tell them what books or what type of evidence they can resort to and use?

237 By Mr. Stewart: I think Judge Clark in the Supreme Court has answered that question for you. Do you want me to stop and read that now?

By the Court: Yes, I would appreciate to see whether I have that power.

By Mr. Stewart: Do you mind if I sit down, Judge?

By the Court: I want you to, please, be comfortable.

By Mr. Stewart: It is a little bit long. This, I think Mr. Barnett will agree with me, is the sort of Bible of this type of case. Judge Clark states in it that these cases have become numerous. There was a time when the Supreme Court was rejecting and turning down petitions for certiarari because it appeared to be just another matter of trying to get the Court to look into the facts, but so many of them came that the Supreme Court finally decided that they had better settle some of these problems that are involved in these cases.

So it will answer the question that your Honor just asked me. It will take me a little time. You know, I feel like apologizing for reading it at some length, but I

238 think the time will be well spent, your Honor.

"Petitioners, husband and wife, stand convicted under Section 145 of the Internal Revenue Code of an attempt to evade and defeat their income taxes for the year 1948. The prosecution was based on the net worth method of proof, also in issue in three companion cases and a number of other decisions here from the Courts of Appeals of nine circuits."

By Mr. Barnett: Will you give the citation, please, Mr. Stewart?

By Mr. Stewart: 348 United States 121, and I am reading from page 124.

By Mr. Barnett: Is that Holland vs. United States?

By Mr. Stewart: That is right.

Thereupon Mr. Stewart reads.

* * *

239-262 * * *

263 * * * By the Court: Do you take the position, Mr. Stewart, that it takes a preliminary hearing and testimony to determine those questions?

The Court always has the right, where there is an income tax case, a murder case or any other kind of a case, to determine the sufficiency or insufficiency of the Government's case.

Nowhere has it been indicated, as I see it right now, that as I sit here, right now, I can say to the Government, "You can't proceed; you didn't follow those leads."

264 By Mr. Stewart: Well, Judge, we may be pioneering a little. After I read this trial court decision, then I would like to address myself to the problem that seems to be in the mind of the Court.

Your Honor, I am reading from 121 Fed. Supp., United States v. Riganto.

* * *

265-272 * * *

273 Now, in the case at bar, your Honor, supposing your Honor should say to me now: "I am not going to let you show anything by Mr. Bernstein". Of course, we would have to accept that, which might be an abuse of discretion. In order to show what I was trying to do, I would still ask your Honor to allow me to go ahead and put it in as an offer of proof.

If we do lose this case here and do get into the upper courts, I would like to show we were trying to straighten it out beforehand.

You know, without my arguing it beforehand, I have given an analysis of these books to the prosecutors and to their experts. If you don't listen to us now, it will come piecemeal during the trial when their expert is on and, when I am cross examining and say, "You have seen them; how about this summary Mr. Bernstein has made? Is that accurate or inaccurate?"

We would get into the same thing, piecemeal.

By the Court: Everything you read is fundamental. I don't quite agree with the trial court in his doubts about the net worth theory. I am fully in accord with him
274 on the nature of the proof. It has got to be substantial and truthful and the court must watch it with a high degree of caution.

I have seen nothing or heard nothing about the right of the court to anticipate anything and to prejudge it.

I have no objection to your making an offer of proof, but I am not going to follow you on defense testimony.

By Mr. Stewart: If I may make my offer of proof, I will proceed with that.

By the Court: I have no objection.

By Mr. Barnett: May I say something, first, your Honor, before you proceed with that, sir?
275 The last case that Mr. Stewart was reading from is United States v. Riganto, which is referred to in the Holland case opinion as being one of those cases which they reject.

By the Court: Didn't I say that? Didn't I note that?

By Mr. Barnett: Yes, but I wanted to let your Honor realize that the Holland case had considered that particular case that he has been referring to.

As I understand it now, your Honor is going to permit him to question Mr. Bernstein, is that true?

By the Court: I think he has a right to on every theory of the law and rules of procedure, to make his record.

By Mr. Barnett: I concede that it is entirely discretionary with your Honor.

By the Court: Oh, yes. I wouldn't bar him from making his record.

By Mr. Barnett: The thing I am working against is being put in a position where I am trying the case out-

side the presence of the jury when we already have a jury selected for that.

By the Court: You haven't the jury here, and this
276 is merely an offer of proof, so that if the Court errs in his final judgment, they have it in the record and, as he says, he wants to explore the field.

By Mr. Stewart: Yes, your Honor.

By the Court: Proceed.

EUGENE BERNSTEIN, called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

Q. State your name, please.

A. Eugene Bernstein.

By the Court: No, I thought I said it would be an offer of proof.

By Mr. Stewart: Yes. I want to put it in by the witness. It is an expert matter. I am not capable of doing it myself. It won't be long.

By the Court: How long will it take?

By Mr. Stewart: Before the morning is over. It is ten to 12:00 now, and I can finish before that, I am quite sure.

277 By the Court: All right. Let's see what it is—only because I don't want to overrule you, being an expert.

By Mr. Stewart: You will find that out.

* * *

278-334 * * *

335 * * * By Mr. Stewart: Judge, you said you wanted all the motions disposed of.

Mr. Barnett, I am going to talk about the stipulations. Do you want to get your copy and follow along?

By the Court: What I am thinking when I say I want to dispose of all the motions—I don't mean to bar you from making any more motions—I mean all motions that are essential to dispose of before we get into the case with the jury.

By Mr. Stewart: I think it is rather important
336 to have your Honor pass on this before Mr. Barnett makes his opening statement.

If I am right about it, he shouldn't be allowed to make this in an opening statement and if he does make it, you can never erase it from the minds of the jurors.

That is, he has, in stipulation No. 1:

"It is stipulated and agreed that Paul DeLucia entered the United States through the Port of New York on August 10, 1920, under the name of Paul Maglio;

"That Paul DeLucia became a naturalized citizen of the United States of America on September 27, 1928, in the United States District Court at Chicago, Illinois;

"That he changed his name from Paul Maglio, as it appears on his petition for naturalization, Government's Exhibit 1, to Paul DeLucia, as it appears on his certificate of naturalization, Government's Exhibit 2;"

Now, I have no quarrel with that. It is the fact. But, it has nothing to do with the case you are about to try.

337 By the Court: Do you intend to go through with that, except under impeachment, Mr. Barnett?

By Mr. Barnett: No, your Honor. I expect to show this man's history from the year 1920 down to the present time; to show how much money he took in and how much money he expended.

By the Court: I am talking about the change of names. What has that to do with his income?

By Mr. Barnett: Nothing, except on the face of the certificates themselves they show that change of name.

By the Court: I think we ought to confine ourselves to income and money, unless he takes the stand and they bring it in some way.

By Mr. Barnett: I have no intention of playing on that change of name.

By the Court: You may show that he came to this country at a certain time.

By Mr. Barnett: In fact, so far as my opening statement is concerned, that's all I intended to allege.

By the Court: It may be prejudicial to show he changed his name unless he takes the stand or somebody brings it into issue. Of course, then the matter is wide open.

338 • • •

339 By Mr. Stewart: There is another one here also:

"That on December 22, 1943, in the United States District Court for the Southern District of New York, in Case No. C-114/101, Paul DeLucia was convicted of conspiring to extort money from producers and exhibitors of moving pictures during the years 1935 to 1940 in violation of Subdivision (d) of Section 420(a), Title 18, United States Code Annotated."

340 By the Court: I was thinking about that. You can stipulate to that, with the exception that you reserve the right to raise the objection to its admissibility and propriety.

By Mr. Stewart: That is right.

By the Court: I told you you could, on that stipulation.

By Mr. Stewart: That is right.

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341 • • •

342 • • • By Mr. Barnett: If he objects to this as it is at this point, I would not put it in, your Honor.

By the Court: All right. That is the answer.

By Mr. Barnett: That disposes of that.

* * *

343-370 * * *

371 AND THEREUPON MR. STEWART ADDRESSED THE COURT AND JURY IN OPENING STATEMENT ON BEHALF OF THE DEFENDANT PAUL DeLUCIA:

By Mr. Stewart: Ladies and gentlemen of the jury, some of you told me that you had been on juries before, so you have a general idea of the purpose of an opening statement.

You have been told by those lawyers over in the civil cases that the opening statement is not evidence. The
372 case is going to be submitted to you after the evidence is heard.

Now, we are going to try to be helpful to you. I am going to try and tell you the story of the case as I see it, and I am going to do my best to reduce it to simple language.

373 I think there is a danger here that the defendants are in—of course, any defendant who is indicted is in danger—but there is a danger of confusion. That is where you mean well, you have promised you would give us a fair trial, but you have to know what the charge is and you have to know what is disputed and what isn't disputed.

You have to know a little something about the case in order to listen to it intelligently. If we didn't make any opening statement at all, and of course, we have that right —we could waive it—but you will hear things from the stand, and they are entirely disconnected. You don't know where it fits. You don't know whether this is disputed or not disputed, and it keeps you more or less in a way of

suspense of mind, and as you go through day after day of that, why, it will be a great hardship to you.

To me, as far as I can tell—you know, I haven't heard the Government's evidence yet. We try to get ready
374 in these cases. We try to find out as much as we can about what we are charged with.

We get a copy of the indictment, and that is in legal language, and it doesn't tell us very much. But we have a general idea, an overall picture, of about what it is.

Now, if I just stand here and tell you that I don't think they can prove their case, that would just be my opinion and you could discount it, and the Judge might even say "This isn't the place for such a statement; it is not the place for an argument."

But I want you to know that that is our position. We don't believe they can prove a case here.

Now in order for you to see whether or not I am right, you have to know what kind of a case they have to prove.

I think Judge Miner will tell you at the conclusion of the case—you see, the trouble with the Judge's instructions is that you don't get them until the end of the case. But
when that time comes, he will tell you that these folks
375 are not on trial for anything except what is in this indictment.

You said you would be fair with us, and of course, being fair means that we can talk to you about some things that you might not like in the way of conduct, but you will have to remember the defendants are not on trial for that, because I am going to talk to you frankly about some things.

One reason why the Government is going to be able to prove some rather detailed income and some rather detailed expenditures as far as DeLucia is concerned is that he was on parole for a period of time, and they have parole reports. Those are official. They are filed with the Parole Agency.

If you know anything about parole, and I suppose everybody knows something about parole, a person first does the time that he has to do, and then he is not released absolutely. He is given sort of a trial outside. He is still under the jurisdiction of the prison and parole authorities.

376 In order to demonstrate that he has become rehabilitated and is entitled to his full liberty, he has to spend a period of time in which he has to follow the rules and regulations of the parole authorities. That includes making a monthly report, showing what money he has taken in and what money he has paid out.

They feel that they have a right to know those things because they want to know what a person is doing and how he is getting along. I suppose the theory is that if a man were hard up, he might be tempted to digress from the law.

Any how, they apply those things to everybody, and they required Mr. DeLucia to make parole reports, and they were made over a period of years, and they are here. They show disbursements and income.

377 Now I think as we go along it will be revealed to you, but I don't see any harm in my telling it to you now, we had some conferences with the Government prosecutor, and we tried to save you the time of listening to a great deal of things that we know they can prove.

They can prove certain expenditures, and we made a stipulation so if Mr. Barnett wants to, instead of bringing in witnesses that, for instance, Mr. DeLucia paid an insurance premium or had bought an annuity for one of his children or something like that, where he had an expense, why, these folks preparing a case for the Government, their revenue agents and their expert accountants, and they go around to the various places, go to a brokerage house and get a statement of the account there, and

get a piece here and a piece there, and they are able to piece together expenditures.

Now, that we felt sure that they could prove or that we knew were a fact, we have agreed that the Government can put them in without any proof of the details or even bringing the witnesses here.

They are going to rely—Mr. Barnett has just told you, but I will tell it in a little different way probably—they are going to rely on circumstantial evidence.

Judge Miner will tell you that that is legal evidence, but it has certain restrictions, commonsense, that the law puts on circumstantial evidence.

Now, circumstantial evidence in a tax case has been used a number of times, and it has been given a name. They call it a net worth proceeding. I suppose the Government would delay this explanation until they put on one of their experts. I don't pretend to be an expert. I don't know a whole lot about bookkeeping or accounting. As a matter of fact, I get confused with those things, but I read the law books, and I know in a general way what is meant by the net worth method. I think it would be well for me to explain that briefly to you, as I understand it.

A taxpayer, as you know, is supposed to make a return. You probably have all made them. You set up what your gross income is at the top first—unless you use a short form, of course, and that we don't have to talk about because it wasn't used here.

You set up your gross income, and then you take off for your dependents, and you take off for various allowances and if you are in business, you have to know something about the Government regulations, and you take off certain expenses of your business, and it brings you down to what is called the net income, and then you figure your tax on that.

By the way, there is no claim that I know of, and the indictment doesn't indicate any and I didn't hear Mr. Barnett say anything—Mr. DeLucia is not charged with cheating the Government by claiming dependents that didn't belong to him or taking an expense that doesn't belong as a business expense. He is not charged with cheating in any way as far as the returns are concerned, as far as I know.

The only claim the Government makes, as I understand it, is that he paid on an income which was less than his actual income, and he concealed from the Government additional income that he should have paid on.

380 We are only here to face three years, as Mr. Barnett has told you, 1948, 1949 and 1950. There is a statue of limitations, you know, about years way on back. Anyhow, they haven't put any other years in the indictment, and those are the only years you will be concerned with.

Here is the way the net worth system operates. If the Government has a good case, they can do it in this way: They can take the 1948 year, however they can do it directly—very often they have a case where the taxpayer has gone down to the office and explained and told exactly how much he had, and they have that written up and signed, and they do if that way. But however they do it, they can show to the Court and to you on the jury what the person had at the beginning of 1948.

Then they can show through some evidence, one way or another, what he had at the end of 1948, and they know from the tax return what he said he had as a gross income and what he deducted and what taxes he paid, so they know how much his net income is.

381 So, by figuring out, they know about how much he should have available to spend during that year, provided he was only spending out of income. You see, if

they can prove that he was only spending out of income, and he spent more during the year than he could possibly have, then they have got maybe a circumstantial evidence case.

But, if you have a man who has been handling large sums of money and he has much more money than they say he had in the beginning of the year, and he spent money, then just proving his expenditures doesn't get them anywhere.

As a matter of fact, I can tell you frankly now that the Government is going to be able to prove in this case that the expenditures ran into large sums of money.

But, it is our position here that Mr. DeLucia paid the Government every cent he owed them and he paid considerable amounts in income tax.

I will tell you a little something about his history with the Government, because it is all going to come out.

382 As I say, if they are going to make any case at all, they are going to make it by what they call circumstantial evidence. Judge Miner will tell you you shouldn't be confused about this evidence that goes back to 1939 and 1940. We are not on trial for that.

They do have the right to show the financial condition, if they can. Some of these cases I have read, they show where a man was working years back as a cook and he only had a small salary and he had the furniture taken away from him on a foreclosure; where somebody had $25 and he couldn't pay it.

Well, they could start with that fellow. He was broke. He claims he had some money on hand. It can be shown, to a reasonable degree.

If you are dealing with a man who has been handling large sums of money and large sums of money in cash, you have got a different situation.

Now, you will find in the indictment, as Mr. Barnett told you, that the first count is for 1948. Judge
383 Miner will tell you that you have to make up your mind after you get out into your jury room, whether you will find Mr. DeLucia guilty or not guilty on that count.

Mr. Bulger is not in that count. He is not in the first three counts at all.

And, you have to give him the same kind of trial for 1948 as you would give him if nothing else was here.

And then, you determine whether or not—then, you look at the indictment and it says that he cheated the Government out of this money by making false statements. That is in the beginning.

There are two dates set out for these false statements, September 1, 1954, before a special agent, Thomas N. Smith, Special Agent Richard S. Stonesifer, and Special Agent John H. Scholz. That is September 1, 1954.

384 And then, on November 19, 1954, before Assistant Regional Counsel Joseph King, and so forth, Mr. Bulger gave some testimony. Mr. DeLucia wasn't there that second time.

Now, there was a reporter present on September 1st in the Treasury Department, as the Reporter is here taking down what I say. And, the reporter wrote it up afterwards and, it is a little too long for me to read, but it will be here in evidence and you will have a transcript of what was said.

And, as we are putting this evidence in, remember, we can't stop and tell you what the purpose is or what our idea is about it. You will just have to listen to it and wait until the case is argued to determine what we think about a piece of evidence.

I don't mind telling you now and telling Mr. Barnett, too, I don't see how in the world he can make out a —

By Mr. Barnett: It sounds like argument to me, Judge.

By the Court: Yes. We are getting into argument.

385 By Mr. Stewart: I don't want to argue.

By the Court: I don't disagree with counsel; the purpose is merely to advise you what it is, not to get into any controversy at this time.

By Mr. Stewart: I will try to keep out of controversy, your Honor.

You will find that when this is before you — and, it is rather long or otherwise I would read it to you, but, it is so long. But, I can give you the general gist of it. I will tell you in a general way what happened.

You see, the Government people were investigating the income tax returns of DeLucia and they wrote him a letter and addressed it to 812 North Lathrop Avenue, River Forest, where he lived, and this is more or less a formal procedure. I suppose they do this with a number of taxpayers. They write a letter and they say, "We are investigating and, pursuant to our policy, you can come down and explain some things to us."

So, we went on down there. Now, Mr. DeLucia didn't open his mouth. He didn't say a word. You know enough law to know that we had a right to either talk there or not.

386 By Mr. Barnett: Your Honor, again I think he is getting into argument.

By the Court: Yes. Well, it is on the borderline. Proceed.

By Mr. Stewart: And, the sum and substance of what we said there — I can sum it up to you now, and, in order to do that I have to tell you a little more about the history of Mr. DeLucia with reference to his troubles with the Government.

We can't be like an ostrich and stick our heads in the ground and hope you won't discover it, but, it comes in incidentally.

I told you about him being on parole. The evidence will show he was discharged from parole. Of course, you can't be on parole unless you have some kind of trouble with the Government first, in the way of a conviction.

The evidence will show that there was a conviction and that a couple of men testified, against these people, to large sums of money. The reason that that comes in in the Tax Court case, is that, after that conviction — that was held in the East, the trial was, and a group
387 of men were charged with shaking down or extorting money from people in the moving picture industry.
388 There was a witness by the name of Bioff and a witness by the name of Brown who claimed they were in this scheme as conspirators, and then they turned evidence for the Government and went on the stand and testified to large sums of money and it was called a million dollar case.

Now, what the Government people did after that conviction — they took that testimony and Bioff told about how he received — he acted as the one who carried the money from the people who were paying it out, the movie picture executives. He claimed that he carried this money and he brought it to Chicago and he gave it to these defendants.

And, he testified as to the arrangement, about how much each one received. I believe there was two-ninths went to each one that was named in the group, and that included Mr. DeLucia.

After the trial and after Mr. DeLucia was sentenced, the Government Revenue agents came along and they

said, "Now, you fellows, you owe us taxes on this million dollars."

389 And, if you know anything about tax procedure or tax claims, they have what they call a "90 day letter"—that is, after the Revenue people, the Intelligence agents, work on it and the Revenue agents work on it, they come to a conclusion that you owe so much and they write you a letter and tell you what that is.

That has a definite name in law. They call that a "90 day letter."

The Government wrote all these 90 day letters to these various people who were in that group and they said, "You owe us a lot of money." They put a big figure in there.

Now, at that time, it was proceeded as a civil matter. The Government was just looking for the money.

Mr. Bernstein represented Mr. DeLucia and these other taxpayers and, being a lawyer and representing the taxpayer, he did what you would expect he would do. He went to them and said, "We don't owe you this money and our tax isn't this big."

390 A settlement was reached and the reason it comes in here is that the Government claimed at that time —if I am correctly informed, and you see, this has to be done more or less by experts who make an analysis of these things—and, Mr. Bernstein, who is an expert—and we also have another expert here who is also a lawyer and who specializes in these accounting problems arising in tax cases, Mr. Joseph Burns—they are the experts for the defense.

The Government has experts, of course, because those are the people who work for the Governmental agencies.

So, if I am correctly informed, these men, Mr. DeLucia, got about $400,000 out of that and paid taxes on it.

Now, he made it in the way of a settlement and the

tax didn't come as high as it would be if he admitted the whole $400,000, but, anyhow, the tax was settled and the lawyers went into court.

Mr. Bernstein went into the Tax Court and a judgment was entered and that settled that.

391 Now, you have to apply certain rules of law which are, at the same time, common sense, and, that is, a settlement closes the books and both sides are foreclosed, and the only thing that will come in here will be whether or not these Government people are going to give us credit for having that $400,000 at that time.

They said we had it at one time and made us pay on it. Now what they say here you will listen to as you go along.

Now, as I told you, we tried to analyze this thing and we have tried to agree with the Government on things that we are not disputing and Mr. Bernstein and Mr. Burns have made out an analysis of these parole reports and, by the way, I think the evidence will show and we will have a change to argue it later, that it was very important that Mr. DeLucia report correctly to the parole people and I don't believe the Government is going to claim here that there was anything wrong or anything that was then done that was wrong in those reports.

392 In order to make those reports, Mr. Bernstein opened a set of books and they are here and Mr. Bernstein, when it comes our turn to put in evidence, will testify that those books are correct and accurate and show the disbursements made.

As we go along with this case, of course, it won't be our turn while the Government is putting on their case, but, I probably will have a chance, although I am not an accountant, but I will have a chance to ask them "Did you allow this money that we call the movie money? How much did you allow us on that?" And, you watch for

things and you will find that there isn't a great deal of difference on a great many things that are going to be talked about here.

That is, when they are putting on the disbursements, why, the chances are we will not dispute it at all.

Of course, they have to do that in order to build their case, but, when it comes to the analysis of it, it will be a question of whether they are able to make out a cir-
393 cumstantial evidence case. In order to do that, they will have to include the things they think they need. Of course, if they don't include what they think they need, they won't have any case.

You won't find any meeting on September 1st where they said it went over, where my name is mentioned. You won't find anything about me saying Mr. DeLucia had $300,000.00. I was just mentioning, Mr. Bernstein was mentioning it because there had been several investigations and one was a Kefauver Committee investigation. You remember reading about that, probably, in the paper.

We have a volume of their printed report here and we made out an excerpt which was copied out, and had it printed, the testimony of Mr. DeLucia.

Now, this was held back in 1950. He was on parole at that time and he couldn't go in there and say he would take the Fifth Amendment. If he did that, they would call it a parole violation. He had to testify and he had to answer questions to anything about which the Senators and counsel for the committee wanted to ask him
394 about.

He went into this detail about his financial condition. They were out to do that.

It was there before the committee in 1950 that Mr. DeLucia told that committee he had $300,000.00 as a sort of a fund, a cushion, and he borrowed other moneys which

increased the money he had as a cushion which he felt he needed and had to have, that is, while he was out on parole and he couldn't perform any activity that the Parole Board would think was illegal. What he had at that time was a farm and it wasn't just some little simple farm; it was 1100 acres, which was afterwards sold for $500,000.00.

The expenditures will show that he built barns and purchased rather expensive machinery and things like that.

But, they won't be able to prove he had that and made those expenditures by cheating the income tax people out of their income tax, because, I am pretty sure when you get all through with this case, you will find Mr. DeLucia paid all the tax he ever owed them and it ran into considerable amounts of money.

395 If you listen, which is all I can ask you to do, and keep your minds open and give us a chance to talk to you again before you arrive at your verdict, I think before you are through, we can prove these defendants are not guilty.

396-430 * * *

431 * * * By Mr. Barnett: I intend, Mr. Stewart, to read Stipulation No. 1 as it is presently prepared, in the light of your previous objection concerning the proof of conviction, and I think before we start, he should have an opportunity to look at it.

By the Court: Come again, please?

By Mr. Barnett: I have redrafted Stipulation No. 1. If Mr. Stewart has no objection, I will read it.

By the Court: In the light of my ruling, you withdrew that?

By Mr. Stewart: Put in "duly." He was "duly" paroled.

By Mr. Barnett: Remained on parole until he was discharged.

By the Court: Tell me—Mr. Stewart, in his opening statement to the jury, went into the entire convic-
432 tion.

By Mr. Barnett: That is right, your Honor.

By the Court: I doubt that now there is any inadmissibility.

By Mr. Stewart: There is a great deal of difference between me stating a fact and the prosecutor putting in details. We are objecting to his putting in details as a part of his case.

By the Court: I overruled the objection. You opened the door and when I heard you say that, in the light of our discussion previously—I overruled the objection. I thought you were going to keep that from the jury entirely.

By Mr. Stewart: It would be impossible, Judge.

By the Court: Then it goes in and I can't bar the Government, in the light of your opening the door.

433 By Mr. Stewart: I still have a record. We will take up, if we may, one thing at a time.

The only thing before the Court is the proposed Stipulation No. 1. I see no objection to it except that I asked Mr. Barnett to add a few things to it. It isn't vital whether he does or not.

He states in here the date of the parole and the date the parole ended, and I was asking him to incorporate that he was duly paroled and, on March 7, 1954, he was duly discharged from parole, which, of course, is the fact.

If he had a witness here I would have the right to bring out the facts they want to bring out.

By the Court: If that is the fact, I see no objection to it.

By Mr. Barnett: Paul DeLucia was paroled from Leavenworth, that is, on August 13th he was paroled. He remained on parole until March 7, 1954. I have no objection to inserting that he was discharged from parole. He wants me to insert the word "duly" in there.

By the Court: I don't see any objection to saying he was discharged from parole.

434 By Mr. Stewart: Mr. Barnett may read this subject to the objection that I have and, as your Honor said, the force of it is somewhat weakened a little bit because of the fact that I talked about it in the opening statement, but, that is the way I am going to try the case.

By Mr. Barnett: Now, your Honor, I want Mr. Stewart to be acquainted with the fact that before I put on any witnesses, I am also going to read another stipulation too, which concerns the various income tax returns. I think he knows the stipulation. I don't think there is any objection to it, other than relevancy.

By Mr. Stewart: I don't see any objection to it. As to the relevancy, we made that point when I preliminarily put Mr. Bernstein on. Our position is they should be permitted to go back of the years of the indictment.

By the Court: I think I ruled on that.

By Mr. Stewart: Yes. That is the only comment I have.

By the Court: All right. Bring out the jury.

(Thereupon the following further proceedings were had in open court in the presence and hearing of the 435 jury, as follows:)

By the Court: Good morning, ladies and gentlemen.

Proceed, Mr. Barnett.

AND THEREUPON, THE GOVERNMENT, TO MAINTAIN THE ISSUES ON ITS BEHALF, INTRODUCED THE FOLLOWING EVIDENCE, TO WIT:

By Mr. Barnett: Your Honor, I have some stipulations which I would like to read to the jury, if I may.

436-513 • • •

514 • • •

Chicago, Illinois,
Monday, May 12, 1958,
2:00 o'clock p.m.

Court convened pursuant to recess.

Present:

Mr. Barnett
Mr. Quan
on behalf of the Government;

Mr. Stewart
Mr. Green
Mr. Gorman
on behalf of the Defendants.

And thereupon the following further proceedings were had herein:—

By the Clerk: No. 57 CR 154, the case on trial.

515 By the Court: Everybody here?

By Mr. Barnett: I think so.

Shall we proceed, your Honor?

By the Court: Proceed. Bring out the jury.

(Thereupon the following proceedings were had in open court in the presence and hearing of the jury:)

WILLIAM M. RUGGABER, called as a witness on behalf of the Government, having been previously duly sworn and examined, resumed the stand and testified further as follows:

Mr. Stewart: That's all the cross examination, your Honor.

Redirect Examination by Mr. Barnett.

Q. Mr. Ruggaber, Mr. Stewart asked you concerning the procedure that followed after a notice of deficiency, or, what is commonly called a ninety-day letter is concerned—what happens thereafter—and he asked you if it was not a fact that the taxpayer, upon receiving
516 such a letter, either had to contest it or pay the tax.

Do you recall that?

A. Yes, sir.

Q. The taxpayer has another option, does he not, that is to say, he may pay the tax and sue for refund if he desires to, may he not?

A. That is correct.

By Mr. Barnett: Your Honor, I gave to Mr. Stewart a certain Government's exhibit, No. 55, over the noon hour.

By Mr. Stewart: Can you wait? I gave it to Mr. Bernstein and he hasn't appeared yet.

By the Court: Maybe that is why he is late.

By Mr. Stewart: Are you going to offer it?

By Mr. Barnett: I have offered it, Mr. Stewart. We will wait and see if there is any objection to it.

By the Court: Do you want to look at those?

By Mr. Barnett: I don't need it now, your Honor,
517 I can proceed with another witness before I finish with this one.

By the Court: All right. Proceed.

By Mr. Barnett: I have no further redirect examination of this witness, your Honor.

By the Court: Do you want to reserve the right to call him again?

By Mr. Barnett: Yes, if I may, I would like to reserve the right to recall him later.

By the Court: You may be excused, with the right to be recalled later.

(Witness excused.)

518 CLAYTON MARSH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Clayton C. Marsh, M-a-r-s-h.

Q. Where do you live, Mr. Marsh?

A. 744 Indian Trail, Lake-in-the-Hills, Algonquin, Illinois.

519-527 . . .

528 By Mr. Barnett: Your Honor, at this point I would like to read a couple of paragraphs from Government's Exhibit No. 57, the petition of the taxpayer in the Tax Court.

By the Court: You may proceed.

By Mr. Barnett: The heading on this document is "The Tax Court of the United States."

Mr. Paul Lelucia, alias Paul Ricca, alias Paul Salvi, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 8803.

Now, I quote:

"Petition. Your petitioner, Paul LeLucia, whom the Commissioner of Internal Revenue, in his notice of deficiency, also decsribes as alias Paul Ricca, alias Paul Salvi, hereby petitions for a redetermination of the

529 deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency, SN:IT, dated May 1, 1945, and, as the basis for his proceedings, alleges as follows:"

Therein there are certain forms of statements that I will not read to you now, with the exception of Paragraph 3, which says:

"The taxes in controversy are income taxes and penalties thereon for the calendar years 1935, 1936, 1937, 1938, 1940 and 1941, in the amount for each of the respective years as follows:"

And then, the figures are set forth and the total for the years 1935 to 1941 of income tax comes to $92,090.99 and fifty per cent penalty comes to $47,540.73.

Now, I skip over to page 8 wherein, in continuing this document it says:

"As to the calendar year 1935"—I skip down to
530 Paragraph C thereof and I quote:

"That the income tax files for the calendar year in question fully accounts for all the income received during said calendar year.

"D. That the tax previously paid by your petitioner for the calendar year in question is a full and complete discharge of the tax liability of your petitioner.

"E. That the inclusion of the item of $44,757.06 for the calendar year in question is not founded on fact but is conjectural.

"F. That the inclusion of the item of $44,757.06 by the Commissioner as income for the calendar year in question is based upon conjecture and is without basis and fact in law; that the inclusion of said item of forty-four et cetera was done to harass your petitioner.

"I. That there is no basis for increasing the item
531 of income in the sum of forty-four thousand et cetera or any portion thereof.

532 Then, on Page 9, as to the calendar year 1936, I quote from Paragraph C thereof:

"That the income tax files for the calendar year in question fully accounts for all the income received during said calendar year."

Paragraph D.

"That the tax previously paid by your petitioner for the calendar year in question is a full and complete discharge of the tax liability of this petitioner." And it goes on into figures which are essentially the same language which I read to you with respect to the year 1935.

Page 10, with respect to the year 1937. Paragraph C.

"That the income tax filed for the calendar year in question fully accounts for all income received
533 during said calendar year."

Paragraph D.

"That the tax previously paid by your petitioner for the calendar year in question is a full and complete discharge of the tax liability of your petitioner."

Similar language as I read to you concerning the year 1935 thereafter follows.

534 On Page 11, with respect to the year 1938, Paragraph C.

"That the income tax filed for the calendar year in question fully accounts for all income received during said calendar year,"

and D,

"That the tax previously paid by your petitioner for the calendar year in question is a full and complete discharge of the tax liability of your petitioner."

The same language is repeated for the year 1940 and for the year 1941.

The document at the tail end reads as follows:

"Wherefore your petitioner prays that this court may hear this proceeding and redetermine the tax liability in this case in accordance with the law and the evidence."

Then appears the handwritten signature "Paul De-
535 Lucia, Petitioner," and "Eugene Bernstein, Counsel for Petitioner."

I can't make out what follows immediately after "Eugene Bernstein." It looks like the abbreviation for Attorney, "Atty."

Then the Jurat:

"Paul DeLucia, being duly sworn, says that he is the petitioner above named, that he has read the foregoing petition and is familiar with the statements contained therein and that the statements contained therein are true except those statements made as to information and belief, and those he believes to be true." Signed, "Paul DeLucia."

"Subscribed and sworn to before me this 9th day of July, 1945." It looks like "S. E. Young, Notary Public."

By Mr. Barnett:

Q. I will leave Government Exhibit No. 56 with
536 you, Mr. Marsh, so that you can refer to it if you need to.

After receiving this case in your office in 1945, Mr. Marsh, what was the first thing you did in connection with it?

A. I studied the case to find out the issues, what the adjustments which had been made in the deficiency notice were and the exceptions taken by the taxpayer in the petition to the Tax Court.

* * *

537-698 • • •

699 • • • By Mr. Stewart: Out of the presence of the jury, Judge, Mr. Barnett and I had a conversation which doesn't appear of record concerning his offer of the reports by the other agents, Mr. Ruggaber and Mr. Klein.

I had the advantage of looking at the Ruggaber report over the noon hour, and I suggested to Mr. Barnett that if he is going to use it, he could probably censor portions of it which might sound prejudicial to a jury—the use of the term "hoodlums," and so forth and so on.

When I made that statement, why, Mr. Barnett at that time decided that rather than be confronted with such objections, he wouldn't even offer it.

700 But now I believe that the case has developed to the point that a correct understanding of the record requires those reports to be in.

So I will withdraw my objection. I believe you should have the Ruggaber report and Klein report here, so the record could be understood, and I will just rely on Mr. Barnett's fairness not to read that part to them, that is all. It doesn't help. It isn't necessary in the report.

I will take a chance on what is in the report, and I believe it should be in the record.

• • •

701-745 • • •

746 • • • By Mr. Barnett: I offer Government's Exhibit 25.

• • •

747 (Said document, so offered and received in evidence, was marked Government's Exhibit 25.)

• • •

748 • • • By the Court: Yes. It may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 26.)

749 • • • DONALD M. FEROE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

750 *Direct Examination by Mr. Barnett.*

Q. Will you tell us your full name, please?

A. Donald M. Feroe, F-e-r-o-e.

Q. Will you keep your voice up just a little, Mr. Feroe?

Where do you live, Mr. Feroe?

A. 5745 Clinton, Minneapolis, Minnesota.

Q. And what is your occupation,

A. I am a supervisor in the Policy Holder Service Department of Northwestern National Life Insurance Company.

Q. And have you been subpoenaed to bring with you certain records of the Northwestern National Life Insurance Company?

A. Yes, sir.

Q. Do you have those records with you?

A. Yes, sir.

Q. May I have them, please?

You better keep them.

Will you describe for us what those records consist of, Mr. Feroe?

A. Well, I have the original files on three life
751 insurance policies issued to the insured by the name of Paul DeLucia.

Q. Do you have some other records, also?

A. I also have what we call premium payment record cards indicating each premium payment or loan interest payment, and loan against each of the policies at various times.

Q. And are these records that you have, records which are kept in the ordinary course of the business of the Northwestern Life Insurance Company?

A. Yes. These identical records are kept on each policy that we issue and it is kept on each policy that we issue and it is kept in the usual course of our business.

Q. And it is a custom of your firm to keep such records?

A. Yes, sir.

Q. And in your petition, do you have access to these records?

A. Yes, sir.

Q. Mr. Feroe, you have a record of a policy, No. 451604?

A. Yes.

752 Q. In the file there,

A. Yes, there is.

Q. And do you have an original application form in that file?

A. Yes, sir, there is an original application form in the file.

Q. Mr. Feroe, I will ask you to examine the document which has been marked Government Exhibit No. 64-A for identification and ask you if that is a true and correct photostatic copy of the original application for that policy which is in your file?

A. Yes. This is a true and correct photostatic copy of the original application for policy No. 451604.

753 By Mr. Barnett: Your Honor, I will offer in evidence at this time Government's Exhibit No. 64-A, which is a photostat and the original files are available here.

By Mr. Stewart: You didn't have this in the stipulation?

By Mr. Barnett: No. This is no stipulation.

By Mr. Stewart: We weren't asked to stipulate to this but I don't see any reason why we shouldn't.

By the Court: Let me do it this way: It may be received in evidence, subject to your objections.

By Mr. Stewart: All right.

By the Court: You may raise the objection whenever you find something. You are still objecting.

By Mr. Stewart: I don't see any objection but I will accept the Court's offer.

By the Court: I will reserve that right.

754 By Mr. Barnett: I take it there is no objection to the fact that it is a photostat?

By Mr. Stewart: Oh, no. We have no objection to the formal proof. If you have other papers, you don't need to go through all that rigamarole.

By the Court: It is received in evidence subject to possible objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 64-A.)

By Mr. Gorman: Pardon me just one moment.

By Mr. Green: Proceed, Mr. Barnett.

By Mr. Barnett:

Q. Mr. Feroe—

By the Court: Did you wish to say something?

By Mr. Green: No. I told him he might proceed. We will look at this thing further, your Honor.

By Mr. Barnett:

Q. Mr. Feroe, Government's Exhibit No. 64-A, the

755 photostatic copy of the application for policy No. 451604 is an application for a policy by whom?

A. It is an application for a policy on the life of Paul DeLucia and the application form is signed "Paul DeLucia."

Q. What is the amount of the policy? Was there a policy issued as the result of that application?

A. This is a $10,000 whole life table H plan which indicates that it is a rate plan of insurance. It was rated 200 per cent because of physical imparity.

Q. That policy was issued when,

A. The application form was dated November 22, 1935 and the policy was issued and dated December 12, 1936.

Q. Does your record show the amount of the premium payment towards that policy?

A. The annual premium is $424.10.

Q. Now, you have a record of a policy No. 457079?

A. Yes, sir.

Q. And on whose life is that policy issued?

A. That is issued on the life of Paul DeLucia and it is in the amount of $5,000.00, a whole life, table H policy.

It is a rated policy identical to the previous policy,
756 only in the amount of five, rather than ten thousand dollars.

Q. What is the amount of the premium?

A. The premium is $212.05 annually.

757 Q. Did you have an application in the file for that policy?

A. There is no application for this policy. This policy was dated March 3, 1936 and was issued at the request for additional insurance, so the application we had for the first policy, No. 451604, was used.

Q. Do you have a record of a policy No. 457080?

A. Yes, sir.

Q. And on whose life is that policy?

A. The insured is Paul DeLucia and that is a $5,000 whole life Table H plan, identical to the other policy.

Q. And what is the date of the issuance of that policy?

A. That is March 3, 1936.

Q. And what is the amount of this premium?

A. The premium annually is $212.05.

Q. Do you have an application for that policy,

A. That policy was issued at the same time policy No. 457079 was issued and, on the basis of the original application.

758 Q. Do you have other documents there, Mr. Feroe, indicating the record of payments of the premiums?

A. Well, we have a premium credit record card for each of these policies, commencing from the time the policy was issued, showing each premium payment, showing any loan that may have been against the policy and any loan interest payment for any loan repayment made.

By the Court: Can you hear him back there?

Speak a little louder, will you, please?

By Mr. Barnett:

Q. I am about to hand you, Mr. Ferbe, Government Exhibit 64-E which is captioned "Premium Payment and Loan History, Policy No. 451604" and ask you if that document was prepared by yourself?

A. Yes, sir. This document was prepared by me.

Q. And what does it reflect?

A. This is a premium payment and loan history which I prepared from the premium credit record cards. It is merely an easier manner of noting each premium
759 payment, loan interest, dividend credit, and so forth, rather than the use of these cards but, it is prepared solely from the cards.

Q. Solely from the records of your company?

A. Yes, sir.

Q. Now, I hand you Government Exhibit No. 66-D which is a similar document and refers to policy No. 457080. If I asked you the same questions about this that I did the last document, would your answers be the same?

A. They would be the same.

Q. That document records payments made on that policy, the premium payments on that policy, according to the records of your firm, is that correct?

A. That is correct.

760 Q. And Government's Exhibit No. 65-D, which is captioned "Premium Payment and Loan History on Policy No. 457079," was that likewise prepared by you from the records of your firm?

A. This was prepared by me from the records of the firm from the premium crediting record cards.

Q. Mr. Feroe, I hand you Government's Exhibit No. 64-D which is captioned "Application for change of beneficiary," and ask you if that is a true and correct photostatic copy of a document in your file.

A. Yes. That is a true and correct photostat of the application for change of beneficiary contained in the case for policy No. 451604.

Q. I hand you Government's Exhibit 64-B and ask you if that is a true and correct photostat of a document in your file.

A. That is. That is agent's application report. It is also a true and correct photostat of the document in the original policy file.

Q. Did you give me the policy with which it is connected?

761 A. And that is connected with policy 451604.

Q. Now, I hand you Government's Exhibit No. 65-C, and ask you if that is a photostat of a document in your file.

A. That is a true and correct photostat of an application for change of beneficiary form on policy 457079.

Q. Government's Exhibit No. 66-C, is that a photostatic copy of a document in your file?

A. And this application for change of beneficiary form is a true and correct photostatic copy of the appli-

cation for change of beneficiary of form of policy 457080.

Q. Government's Exhibit No. 65-A, which contains three sheets—are these photostatic copies of documents in your file?

A. Yes, they are true and correct photostats of the documents contained in our files.

Q. And the originals of those documents, were they kept in the ordinary course of your business?

A. Yes. This correspondence was kept, is kept in the usual course of our business.

Q. Is there a policy number with which those documents are related?

762 A. Yes. This letter refers to policy Nos. 457079, 457080 and 451604.

Q. I hand you Government's Exhibit No. 66-A and ask you if that is a true photostat of a document in your files?

A. Yes. This is a true and correct photostat letter contain policy file 457079.

Q. And was that document also retained in your file as part of your ordinary business?

A. Yes, it was.

By Mr. Barnett: Your Honor, I offer in evidence Government's Exhibit 65—pardon me, 64-E, 65-D, 66-D, 66-A, 65-A, 66-C, 65-C and 64-D and also 64-B.

By Mr. Stewart: I will accept the same ruling.

By the Court: The same ruling. They may be received in evidence.

By Mr. Green: The defendant Bulger objects to the materiality and relevancy.

By the Court: The same ruling.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 64-B, 763 64-D, 64-E, 65-A, 65-C, 65-D, 66-A and 66-C and 66-D.)

By Mr. Barnett:

Q. Mr. Feroe, what is the address of the policyholder, Paul DeLucia, as shown by your records?

A. Our latest record would indicate the address as 1515 Bonnie Brae, River Forest, Illinois.

764 Q. Do you have another address, also?

A. Well, according to the numbers I have here, that would be the address to which we would send premium notices.

Q. Do you have an earlier address?

A. We have an earlier address as 5300 West Jackson Boulevard, Chicago, Illinois.

Q. Do you have another address on there, also,

A. I have a copy of a letter addressed to 812 Lathrop, River Forest, Illinois.

Q. Is that listed as the address of Paul DeLucia?

A. That letter was addressed to Mr. Paul DeLucia.

Q. Now, Mr. Feroe, I hand you Government Exhibit No. 64-E, which is the copy that you prepared of the loan payment—pardon me,—premium payment and loan history on one of these three policies.

What is that policy number?

A. That is policy 451604.

Q. And can you tell us the first date on which a premium payment was made on that policy?

A. Well, our records indicate that the first annual premium in the amount of $424.10 was paid on Feb-
765 ruary 20, 1936.

Q. Were all premiums thereafter paid annually?

A. All premiums have been paid annually.

Q. And how long was the policy in force?

A. The policy is still in full force and effect.

Q. And have all premium payments been made since 1936?

A. Yes, sir.

Q. By what means have the premium payments been made, according to your records?

A. Well, there have been various means. Premium payments from 1937 to 1944 were paid by means of a cash payment, plus use of the annual dividend credit.

Premium payment in 1946 was paid by means of an automatic premium loan, plus the use of the dividend credit.

Q. Will you explain to us the meaning of an automatic premium loan?

A. Well, these policies provide that in the event a premium is not paid within the grace period, the company will automatically pay the premium by making the loan transaction against the cash value of the policy
766 and this prevents the policy from lapsing and this transaction is normally carried out in our office, 70 days after the due date.

Q. And the first such transaction with reference to the policy that you are now testifying about occurred when?

A. The first automatic premium loan transaction occurred on January 24, 1946.

Q. And how was the premium paid for 1947,

A. That was paid by an automatic premium loan transaction, plus use of the 1947 dividend.

Q. How was the premium payment made for the year 1948?

A. That was paid by means of a—the 1948 premium payment was paid in cash, plus the use of the 1947 dividend credit.

Q. And is there a loan repayment shown any place there?

A. The first loan repayment is indicated on April 20, 1951.

767 Q. Then how was the premium paid in 1949?

A. 1949, the annual premium due December 12,

1949, was paid by means of an automatic premium loan plus use of the dividend credit, and this was done on January 24, 1950.

Q. How was the premium paid for the year 1950?

A. The annual premium due on December 12, 1950 was paid by means of an automatic premium loan plus use of the 1950 dividend.

Q. Do you have the amount of the total loan outstanding?

A. At the present time?

Q. No, at that point.

A. At that point the total loan amounted to $2,304.43.

Q. And what was paid on that loan in 1951?

A. On April 20, 1951, our records indicate we received a payment of $2,304.43.

Q. The premium due date on that policy was what?

A. The premium due date on policy 451604 is December 12th of each year.

Q. I believe that you have another copy of the transcript, do you not, Mr. Feroe?

768 A. Yes.

Q. I will refer you to Government's Exhibit No. 66-D, which I have in my hand, which is the premium payment and loan history on policy No. 457080.

By The Court: This may be a good time to give the jurors a short recess. Ten minute recess.

(Thereupon a short recess was taken.)

By The Court: Bring in the jury.

(Thereupon the following proceedings were had in open court, in the hearing and presence of the jury:)

By Mr. Barnett:

Q. Mr. Feroe, I neglected to ask you one question with respect to policy No. 451604. Does your register show that

interest was charged on the loans from December 1946 on?

A. Yes. Interest on this policy was charged at the annual rate of six per cent, which is payable in advance from the date of each loan or loan increase to the next policy anniversary date. Then when a loan repay-
769 ment is made, the owner would receive credit for any unearned interest refund.

Q. I show you policy No. 457080, transcript of which is Government's Exhibit 66-D. What is the date of the first annual payment on that policy?

A. The annual premium due March 3, 1936 was paid in cash on April 27, 1936 in the amount of $212.05.

770 Q. How long was that policy in force?

A. That policy is currently in force.

Q. And have the annual premiums been paid ever since 1936?

A. Yes, each annual premium has been paid since 1936.

Q. How have those premiums been paid?

A. You mean the mode annually or—?

Q. Yes, the mode.

A. Yes. Each payment has been made annually.

Q. By cash or by taking advantaeg of the dividends or what?

A. That annual premium due in 1937—

Q. May we generalize that, Mr. Feroe, instead of going through the years?

A. Yes. The annual premiums from 1937 to 1944 were paid by cash, plus the use of the dividend credit. The premiums 1945 to 1948 were paid by means of an automatic premium loan plus use of the dividend credit. The loan was fully repaid—the loan amounted to $896.89 on May 14, 1948, and was fully repaid at that time.

771 Q. Was interest charged on that loan also?

A. Yes, loan interest was charged at the annual rate of 6 per cent on each loan transaction.

Q. Now turning to your transcript of policy No. 457079, which is Government Exhibit 65—, what is the first payment on that policy, the first premium?

A. Initial annual premium due March 3, 1936 was paid in cash on April 24, 1936 in the amount of $212.05.

Q. Is that policy still in force?

A. That policy is still in force.

Q. Were the premiums paid annually since 1936?

A. Yes, each premium has been paid on the annual basis.

Q. What method of payment was used?

A. The annual premiums due in the years 1936 through 1944 were paid in cash plus use of the dividend credit.

The annual premiums due in 1945 through 1948 were paid by means of an automatic premium loan plus use of the dividend credit.

This loan was repaid, it amounted to $896.89, and it was repaid on March 2, 1949.

772 By Mr. Barnett: I have no further direct examination of this witness, your Honor.

By The Court: Are you offering these in evidence?

By Mr. Barnett: I have already offered all of these documents, and as I understand it, they are admitted.

Is that right?

By Mr. Stewart: Yes.

By The Court: All right.

You may cross examine.

By Mr. Stewart: We have no cross.

By Mr. Green: May the record show our standing objection, that is all, your Honor?

By The Court: The same ruling.

By Mr. Barnett: I would like to read some of this correspondence.

By The Court: I was hoping that I could get an answer from you now as to objections, if any, that you wish to make to those exhibits which have been re-
773 ceived subject to objection.

By Mr. Stewart: I don't see any materiality, but go ahead. They can't hurt us.

By The Court: All right, they may be received finally, and you may read them.

By Mr. Barnett: You Honor, as I understand it, this witness may leave and take his original records with him?

By Mr. Stewart: We have no objection to that.

By Mr. Barnett: Do you have extra copies of those exhibits? Do you mind leaving them with me so I can give them to the defendants?

By The Witness: Yes, surely. Here is a copy of each policy.

By The Court: By agreement of all parties, subject to Mr. Bulger's general objection, the originals may be withdrawn and copies substituted therefor.

By Mr. Stewart: That is all right.

By Mr. Green: Yes.

By Mr. Barnett: Mr. Feroe may leave the stand
774 now as far as we are concerned, your Honor.

By The Court: Yes.

(Witness excused.)

775 By Mr. Barnett: Government's Exhibit No. 64-A, which I will only read in part, is the application for a life insurance policy in the name of Paul DeLucia, address 5300 Jackson Boulevard, Chicago, Illinois. At the date of this application his age is 37.

His business address is given as 401 South Michigan Avenue, Chicago, Illinois.

Present occupation is given as "Owner Playhouse Theatre. Name of firm or employer, self.

"Other occupations, at present, if any: None.

"How long have you been engaged in your present occupation? Three years.

"What was your previous occupation: Theatre.

"Do you contemplate any change in occupation? No."

Then there is a listing of other insurance carried: 1933, Italo American, $1500.00; and another policy in the
776 same firm for $5,000.00.

The document is signed "Paul DeLucia," and dated "this 22nd day of November, 1935." Witnessed by H. L. Cook.

Government's Exhibit 64-B is agent's application report in connection with the same application and reads:

"Full name of applicant, Paul DeLucia.

"Plan of insurance applied for: Special whole life preferred risk, amount $10,000.00.

Place to send policy "H. W. Blount, 204 West Wacker Drive, Chicago, Illinois.

"What is applicant's financial worth? $25,000.00.

"Approximate income? $5,000.00 per year."

This is dated November 22, 1935 and signed H. L. Cook, Agent.

By Mr. Stewart: Judge, I didn't know that was in
777 there. That is hearsay. That is some agent saying something. That doesn't mean anything. I move to strike that.

By The Court: Will you read it again, please?

By Mr. Barnett: The title of this document is Agent's application report. Full name of applicant Paul DeLucia; plan of insurance and so forth.

"What is applicant's financial worth? $25,000.00.

"Approximate income? $5,000.00 per year."

By The Court: Is that the objection?

By Mr. Stewart: That is the objection.

By The Court: Objection overruled.

778 By Mr. Barnett: Government Exhibit No. 64-D is an application for a change of beneficiary under policy No. 451604 and states:

"Full name of beneficiary: Mary Anna DeLucia, daughter; then Anthony P. DeLucia, son and Paul Richard DeLucia, sharing equally or to the survivor or survivors in equal shares."

Dated the 14th day of November, 1951, Chicago, Illinois. Signed, "Paul DeLucia and signed in the presence of J. I. Bulger."

Government Exhibit 65-C is an application for a change of beneficiary in connection with policy No. 457079, with the same names as I have read before, and dated the 14th day of November, 1941, Chicago, Illinois, signed "Paul DeLucia" and "Signed in the presence of J. I. Bulger."

Government Exhibit 66-C is the application for
779 change of beneficiary in connection with policy No. 457080, and the beneficiaries are listed as I have stated them before, dated the 14th day of November, 1941, at Chicago, Illinois, signed, "Paul DeLucia," and "signed in the presence of J. I. Bulger."

Government Exhibit 65-A is a series of three letters. The first is dated February 11, 1949, being an office copy of a letter from the Northwestern Life Insurance Company, addressed to Mr. Paul DeLucia, 812 Lathrop, River Forest, Illinois.

"Dear Mr. DeLucia:

"We have received a letter from our Chicago representative requesting that information concerning the loan on your policy be forwarded to you.

"In reply to the request a statement of the loans completed follows:"

Then without going into detail on it, there is a
780 statement with respect to the loans, and then it says:

"Until the present loan of $1,284.65 is repaid it will be necessary to renew it annually by payment of the loan interest which amounts to $77.08. The premiums and loan interest are now paid to December 12, 1949."

This is signed, "George H. Davis, Supervisor, Division of Policyholders' Service."

Next is a letter dated February 16, 1949, which is part of the same Exhibit No., on the stationery of Joseph I. Bulger, Attorney at Law, City Hall Square Building, 139 North Clark Street, Chicago, addressed to Northwestern National Life Insurance Company:

"Dear Sir:

"Mr. Paul DeLucia referred to me your letter of February 11, 1949 for the purpose of clarifying the status of policy No. 457079, 457080, and 451604.

781 "Your letter of February 11 is in reference to Policy No. 451604. Are the premiums on policies 457079 and 457080 in good standing at this time?

"Awaiting your reply, I am,

Yours truly,

"Joseph I. Bulger."

782 The third document, which is a part of Exhibit 65-A, is a letter dated February 18, 1949 from the Northwestern Life Insurance Company to Mr. Joseph I. Bulger, 139 North Clark, Chicago, Illinois.

"Dear Mr. Bulger:

"In reply to your inquiry dated February 16, 1949, we are pleased to advise you as to the status of the two above-numbered policies.

"Premiums on both policies are now paid to March 3, 1949. There is no loan on policy No. 457080. There is an outstanding loan of $896.89 on policy 457079 with the annual loan interest of $53.81 now paid to March 3, 1949."

Government's Exhibit No. 66-A is a photostatic copy of a handwritten letter on the stationery of Joseph I. Bulger, Attorney at Law, 139 North Clark Street, Chicago, Illinois. It is dated April 20, 1951 and reads:

783 "Northwestern National Life Insurance Company, Minneapolis, Minnesota:

"Gentlemen:

"I have been instructed by Mr. DeLucia to advise that he mailed you his checks on March 12, 1951 in payment of the premium for the policies which are mentioned in the notices or statements and enclosed herewith.

"If the payment mailed you on March 12, 1951 is insufficient to cover the entire premiums please mail to Mr. DeLucia direct additional charges if any. He regrets that the payments were not made on time.

"Yours truly,

"J. I. Bulger for Mr. Paul DeLucia, 812 North Lathrop Avenue, River Forest, Illinois."

Mr. Beahan.

RAY J. BEAHAN, called as a witness on behalf of the Government, having been first duly sworn, was ex-

784 amined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Ray J. Beahan.

Q. Where do you live, Mr. Beahan?

A. 1801 Lake Shore Drive, Long Beach, Michigan City, Indiana.

Q. What is your occupation?

A. Real estate and insurance?

Q. How long have you been engaged in that occupation?

A. Thirty years.

Q. During the course of your professional occupation, have you had occasion to do business with Mr. Paul DeLucia?

A. I have.

Q. Do you see Mr. LeLucia in the court room?

A. I do, yes.

By Mr. Barnett: May the record show that he has identified the defendant Mr. DeLucia.

785 Q. Will you tell us what the nature of your business transactions with Mr. DeLucia have been?

A. Sale of a home at Long Beach, Michigan City, Indiana, to Mr. DeLucia.

Q. When did that take place?

A. In about 1934.

Q. Is that when you first met Mr. DeLucia?

A. That is the first time I met him, yes.

Q. Would you relate to us the circumstances under which you met him?

A. I believe at the time Mr. DeLucia was renting the George A. Busse home in Long Beach and I knew Mrs. Busse, and I knew the Busses very well, so I was enlisted to handle the sale of the home, and the potential prospect was the present tenant, who happened to be Mr. DeLucia at the time.

Q. So did you contact Mr. DeLucia?

A. I did, yes.

Q. As a result of that contact, did you close the deal with Mr. DeLucia and Mrs. Busse?

A. I did, yes.

Q. Do you recall the details of the sale, the sale price, mortgages, or anything of that nature?

786 A. Well, the sale was the usual transaction where a mortgage is involved. It was assumed by the pur-

chaser in its present then balance. The difference was paid in cash.

There was a second mortgage at the time held by an individual, friend of Mr. Busse's, the owner.

Q. What was the amount of the sales price?

A. In excess of $10,000.00.

Q. Do you recall what the amount of the first mortgage was?

A. In excess of $7,000.00, somewhere around $7600.00, I believe.

Q. Can you recall who the holder of the first mortgage was?

A. Great Lakes Mortgage Company, mortgage bankers for Metropolitan Life Insurance.

Q. Was there a second mortgage on that also?

A. A second mortgage in the amount of $2400.00, I believe, at the time.

Q. Did you have records of that transaction in your office after the closing of the deal?

A. Yes, I did.

Q. Did you keep an informal closing statement 787 showing the details of the transaction?

A. I kept my files in connection with all transactions and a closing statement in accordance therewith, with each one.

Q. Are those files still available in connection with this transaction?

A. No, they are not.

Q. What has become of them?

A. Well, I destroyed them.

Q. Prior to the destruction of those files, did you make them available to an Internal Revenue agent?

A. I did, yes.

Q. Named Tracy Stains?

A. Yes, I believe that was his name.

Q. Did he in your presence make notations from those files?

A. Yes, he did.

Q. I hand you what has been marked Government's Exhibit No. 68, and ask you if you recognize this as Mr. Stains' notations made in your presence from your files?

A. I recall this.

Q. Can you refresh your memory from that docu-
788 ment and tell us the total selling price of the property?

A. $13,938.70, according to this, which includes a few minor items, prorations.

Q. That was the total price?

A. That is right.

789 Q. That included the first mortgage that was being undertaken, is that correct?

A. That is right.

Q. And that was in the amount of how much?

A. $7,480.

Q. That also included assuming a second mortgage, did it?

A. That did, in the amount of $2,400.

Q. And it also included payment of certain taxes and interest, is that correct?

A. Yes, including interest and pro-rated taxes, accrued interest of $448.80 and pro-rated taxes of $102.34.

Q. How much was the amount that was paid by Mr. DeLucia at the closing?

A. $4,500.—well, there are some other fees there—$4,688.70, according to this statement.

Q. Is that substantially correct, as far as your recollection goes?

A. Yes, it is.

Q. Mr. Beahan, there was a second mortgage which was assumed by Mr. DeLucia at the time of this purchase, was there not?

790 A. Yes.

Q. Was that second mortgage ever satisfied by Mr. DeLucia?

A. I think it was.

Q. When was that?

A. Well, it was contiguous to the deal, to the other transaction.

Q. What was that?

A. Contiguous to the time of the other transaction.

Q. The second mortgage holder—

A. That had to be satisfied there on account of the gentleman that held it.

Q. The amount of that second mortgage was how much?

A. $2,400.

Q. I hand you Government Exhibit No. 67, and ask you if you recognize that as the deed to the Busse property.

A. I recognize the legal description that substantiates the deed.

By Mr. Barnett: Your Honor, I will offer in evi-
791 dence Government Exhibit for identification No. 67, which is an exemplified and authenticated copy of a warranty deed of LaPorte County.

By the Court: It may be received into evidence.

By Mr. Green: And may we have our general objection?

By the Court: Yes, subject to the objection.

(Said document, so offered and received in evidence, was marked Government Exhibit 67.)

By Mr. Barnett:

Q. Mr. Beahan, subsequent to the purchase of the house by Mr. DeLucia, which took place in 1934, did it?

A. Yes, sir.

Q. Did you have occasion to have any further real estate transactions with Mr. DeLucia?

A. Some additional lots enclosing the original transaction, yes, on the fringe area.

Q. When did these subsequent transactions take place?

792 A. 1935, I believe. I am not positive about that.

Q. The following year?

A. Yes, the following year.

Q. How many lots did you sell to Mr. DeLucia?

A. Two at one time and then two additional at another, shortly after.

Q. Were all of these lots contiguous to this former Busse house?

A. Yes, correct.

Q. And they were in Long Beach, Indiana?

A. That is correct.

Q. Do you recall whether those lots had numbers?

A. 40, 41, 42 and 43, I believe.

Q. What was the selling price of those lots to Mr. DeLucia?

A. $800.

Q. $800 apiece?

A. Per lot.

Q. That is four lots at $800 each?

A. That is right.

Q. A total of $3,200?

A. Right.

793 Q. Now did that include commission payment as well?

A. It did, yes.

Q. That was the total price paid by Mr. DeLucia?

A. Yes.

794 Q. I hand you Government's Exhibit No. 69, Mr. Beahan, and ask you if you recognize this as a photostatic copy of the deed to the four lots which you have referred to?

A. Yes, but I see I misquoted the numbers previously. I recognize the deed.

Q. What are the lot numbers?

A. 35 and 36 and 41 and 42.

By Mr. Barnett: Your Honor, I will offer Government's Exhibit No. 69, which is an exemplified copy of the deed from LaPorte County, Indiana.

By the Court: It may be received subject to the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 69.)

By Mr. Barnett:

Q. Mr. Beahan, I hand you Government's Exhibit No. 70, and ask you if you recognize that document, which is a photostatic copy of a deed?

A. Well, I know this property, but I don't recall making this transaction.

795 Q. I will also hand you Government's Exhibit No. 71, another deed.

A. I likewise recognize that. Those are on the opposite side of the road from Mr. DeLucia's property, in another subdivision.

Q. Did you handle those transactions?

A. No, I did not.

Q. Did you have occasion to negotiate with Mr. DeLucia for the sale of some lots from a man named Harvey Frier?

A. Correct.

Q. Do those deeds that you have there refer to those lots?

A. I want to retract my previous statement. I had something to do with the first transaction, and then I did not participate in the next one of the same property. It was done directly with Mr. Frier. I am sure about that now.

Q. Now, will you tell us what year this occurred, that you did have something to do with it, approximately?

A. I would say about 1937.

Q. Is that about right, 1937?

A. I am looking for the jurat—oh, here it is—796 1940, March 1st, 1940.

Q. What conversation did you have with Mr. DeLucia concerning this, or rather, when did you have a conversation with Mr. DeLucia concerning this transaction?

A. Well, I talked to him on occasions about it, until he finally decided to purchase, just followed up my sales talk with him.

Q. Were you acting as a broker at that time?

A. I was—no—yes, I was. I was acting as a broker. There was no license law in the State of Indiana at the time, so if you want to construe myself as a broker, I could rightfully act, yes.

Q. Were you representing Mr. Harvey Frier?

A. On that particular occasion, yes.

Q. Did you sell the lots to Mr. DeLucia?

A. I did, yes.

Q. For what price?

A. I think those were $800.00.

Q. $800.00 each?

A. Yes.

Q. How was the money paid?

A. I don't recall how it was paid. If you are dif-
797 ferentiating between cash and checks, I don't recall. That is so long ago.

Q. Was the money paid to you or was it paid to Mr. Frier?

A. Paid to me, on that one particular transaction, yes.

Q. And then you—

A. In turn turned it over to Mr. Frier.

Q. Now the deed that you say you sold the lot to Mr. DeLucia on, is that Government's Exhibit No. 70?

A. That is 71 here.

By Mr. Barnett: I will offer into evidence Government's Exhibit No. 71, which is the exemplified copy of the deed of certain lots in LaPorte County, Indiana.

By the Court: Same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 71.)

By Mr. Barnett:

Q. Now, with respect to Government's Exhibit No. 70, Mr. Beahan, will you examine that, please?

798 A. This is a regular deed that was offered at the time by the Shoreland Hills, Incorporated, who owned the property, who Mr. Frier was connected with as part owner.

It is typical of that type of deed with the ordinary covenants, restrictions, and the legal descriiption set forth in meets and bounds.

The plat was not yet recorded.

Q. Well, with respect to the lots described in that deed, did you have anything to do with selling them to Mr. DeLucia?

A. Now, I don't know whether it was on Government Exhibit 71 which you just took or on this one. I would say, whichever has the prior date, is the one I handled.

Q. Well, what is the date on that deed?

A. The 10th day of January, 1939, so, this should be it.

Q. That should be the one?

A. Yes.

Q. All right.

By Mr. Barnett: Your Honor, I will offer in evi-
799 dence Government Exhibit 70, which is another exemplified deed.

By the Court: The same ruling as to the last one.

(Said document, so offered and received in evidence, was marked Government Exhibit 70.)

By Mr. Barnett:

Q. Mr. Beahan, did you have any other real estate transactions with Mr. DeLucia?

A. No. That was all.

Q. Now, before we leave the subject of his real estate transactions, you testified that the original house, the Busse house, that was bought by Mr. DeLucia, was bought under certain mortgages and that he paid something over $4,000 at the time of the closing.

Do you recall how that payment was made?

A. I think the final payment was made—Paul and I went to the Western Union Telegraph Office. He obtained proper documents and took care of the transaction.

Q. What do you mean by "proper documents"?

A. Well, I mean it was a draft.

800 Q. Money order or draft?

A. Money order or draft.

Q. Do you know how he paid for the draft?

A. Do I know how he paid for the draft?

Q. Did you see him pay for the draft?

A. No.

Q. Were you with him at the time?

A. I was in the Western Union Telegraph Office, yes.

Q. Did you see how he paid for it?

A. No.

Q. Now, does that dispose of the real estate transactions that you had with Mr. DeLucia, Mr. Beahan?

A. Yes. They were all involved in that one area, in that one home.

Q. Did you also have some insurance transactions with Mr. DeLucia?

A. Yes.

Q. What did those insurance transactions consist of?

A. Fire and tornado on the dwelling.

Q. Fire and tornado on the dwelling?

801 A. And then later, coverage on the guest house.

Q. Now, the dwelling that you refer to is the house that used to be called the "Busse house"?

A. That is right.

Q. That is located at Long Beach, Indiana?

A. Yes.

Q. When was the first year that you covered that house with fire insurance?

A. 1934.

Q. And what was the amount of the insurance?

A. $10,000.

Q. What was the annual premium, or, what was the premium for it?

A. $90.

Q. Did you also cover furniture at that time?

A. $5,000.

802 Q. Now, how long did the—was that fire insurance renewed annually?

A. It was, yes.

Q. And was it ever increased?

A. It was increased when he built an addition to the home, in the amount of $15,000.00 and $10,000.00 tornado, $15,000.00 fire, $10,000.00 tornado, which would then make

the coverage in the policy twenty-five thousand on the dwelling, ten thousand on the household goods. That would be it, and ten thousand tornado.

Q. Now, how long did you continue to carry the fire insurance on the house?

A. Until shortly after the fire.

Q. And that fire occurred when?

A. 1942, I believe, 1941 or 1942. It was 1941 or 1942.

Q. It could also be—you are not sure of the date?

A. No, I am not positive of the date.

Q. It could also be 1942?

A. I was there at the time of the fire but I don't know the date. All I know is that it was a Sunday.

803 Q. Now, do you have records in your office which record the premium payments and the amount of these policies?

A. A policy record book, yes.

Q. You have a policy record book in your office?

A. Yes.

Q. Do you have that policy book with you?

A. No, I don't.

Q. I hand you Government's Exhibit No. 72 and ask you if this is a correct transcription of the amount of premium paid on the insurance policy that you carried on that property.

A. This appears to be correct, yes.

Q. I notice that your name is signed to it. Did you have an opportunity to check that at some prior date?

A. Oh, yes. I furnished the figures myself and then checked them later.

By Mr. Barnett: Your Honor, I will offer this document, which is Government's Exhibit No. 72 for identification, in evidence.

By the Court: The same ruling as before. It may 804 be received, subject to Mr. Bulger's general objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 72.)

By Mr. Barnett: Your Honor, I have no further examination of this witness at this time but I would like the right to recall him at a later date for one further item that we haven't covered now.

By Mr. Stewart: If you will state what it is, maybe we will stipulate to it.

By Mr. Barnett: If I could state it to you right now, Mr. Stewart, I would.

By Mr. Stewart: All right. You can state it tomorrow without the witness, if you want.

By Mr. Barnett: You may be excused.

By the Court: Any cross examination?

By Mr. Stewart: No cross.

By the Court: All right.

(Witness excused.)

By the Court: Do you have time for one more witness?

805 By Mr. Barnett: I have some stipulations which I would like to read, your Honor, if I may.

By the Court: All right.

By Mr. Barnett: Your Honor, I have one short witness that perhaps we can put on.

By the Court: Put him on.

By Mr. Barnett: Mr. Smiles.

ALEXANDER F. SMILES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you state your full name, please?

A. Alexander F. Smiles.

Q. Where do you live, Mr. Smiles?

A. At Joliet, Illinois.

Q. And what is your office?

A. I am vice president of the First National Bank.

Q. Of Joliet?

A. Of Joliet.

806 Q. And were you subpoenaed to bring a certain record with you today?

A. Yes, sir. I have it here. I have a record of the drafts drawn on the Federal Reserve Bank, our bank, of January 16, 1942.

Q. Now, Mr. Smiles, what is your position with the bank?

A. Vice president.

Q. And in that position, do you have custody and control of the records of the bank?

A. Yes, sir.

Q. I will hand you a photostat which is Government's Exhibit No. 97, a photostat of a check and ask if your records discloses the purchase of that check, the original purchase of that check.

A. They do, yes, sir.

807 Q. When was the check purchased?

A. On January 16, 1942.

Q. And is it a cashier's check?

A. This is a Federal Reserve bank draft, sir.

Q. And it was purchased at your bank?

A. Yes, sir.

Q. Do your records disclose who the purchaser of that check was?

A. They do not.

Q. Do the records disclose the amount of that check?

A. $5,000.

Q. Do you still have the original of that check?

A. Yes, sir, I do.

Q. Do you have it with you?

A. Yes, sir.

Q. May I see it, please?

Do your records indicate that the check was returned to you in a canceled condition?

A. They do, yes, sir.

Q. Do your records indicate to whom the check was made payable?

A. To the Prudential Insurance Company of America.

808 By Mr. Barnett: Your Honor, I am offering the photostat, Government Exhibit No. 97 for identification, in evidence, subject to connection later, as to the purpose of this check.

By Mr. Stewart: The same check?

By Mr. Barnett: No. I have the original here, your Honor, but I would like to have the photostat put in evidence and I want this gentleman to keep the original.

By Mr. Stewart: That is all right. Wasn't that covered by the stipulation?

By the Court: The Government Exhibit so offered may be received.

(Said document, so offered and received in evidence, was marked Government Exhibit 97.)

* * *

809-818 * * *

819 D. FRANK COCCIA, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. D. Frank Coccia, C-o-c-c-i-a.

Q. Is that first letter D?

A. That is right.

Q. D as in Dennis.

Where do you live, Mr. Coccia?

A. 601 North Kenilworth Avenue, Oak Park, Illinois.

Q. What is your occupation?

A. I am general secretary of the Italo American National Union, Chicago, Illinois.

By the Court: Not so fast. I am having a problem.

Do you hear him?

By Mr. Barnett:

Q. What is your occupation, again?

A. General secretary of the Italo American National Union, Chicago, Illinois.

820 Q. That is Italo American?

A. National Union.

Q. How long have you been in that position, Mr. Coccia?

A. Since 1931.

Q. In that position, do you have custody and access to the regular records of the Italo American National Union?

A. Yes, I have.

Q. What is the business of the Italo American National Union?

A. Fraternal life insurance.

Q. Fraternal life insurance?

A. Yes, sir.

Q. Were you subpoenaed to bring certain records with you this morning, Mr. Coccia?

A. Yes, sir.

Q. You were?

A. Yes, sir, I did.

Q. I hand you what has been marked Government Exhibit No. 73, and ask you if you have the original of that photostatic document.

A. Yes, I have.

821 Q. Do you have the original of that document?

A. Yes.

822 Q. Now, I hand you Government's Exhibit Nos. 74, 75-A, 75-B, 76-A and 76-B and ask you if those are both true and correct photostatic copies of documents in your files.

A. Yes, sir, they are.

Q. And will you tell us what the general nature of those documents is?

A. These are applications for life insurance.

Q. And there are a couple of other papers there too, are there not?

A. And there is an application for conversion to term insurance.

Q. And in whose name are those applications for life insurance?

A. Paul DeLucia and Nancy DeLucia.

Q. Those are documents kept in the ordinary course of your business, are they?

A. Yes, sir.

Q. And it was your custom to keep such records?

A. Yes, sir.

By Mr. Barnett: Your Honor, at this time I will offer Government's Exhibits Nos. 73, 74, 75-A, 75-B, 76-A and 76-B.

823 They are photostatic copies of the applications and conversion statements on file with Mr. Coccia.

By Mr. Stewart: No objection except the standing one that we have.

By the Court: All right. They may be received in evidence.

By Mr. Green: And the specific objection as to Mr. Bulger, your Honor.

By the Court: Yes, the same objection as yesterday.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 73, 74, 75-A, 75-B, 76-A and 76-B.)

By Mr. Barnett:

Q. Now, Mr. Coccia, you have an application in your file for an insurance policy on the life of Paul DeLucia, in fact, two of them on Paul DeLucia, right?

A. Yes.

Q. Those are policy numbers—

A. 11973.

Q. 11973?

824 A. For $1500.00.

Q. For $1500.00.

A. And 12607 for five thousand.

825 Q. Do you have a record of the premium payments made on those policies?

A. Yes, sir, I have.

Q. Do you have that record with you?

A. Yes.

Q. May I see it, please?

I don't think we will need the records.

Mr. Coccia, can you tell us the amount of the annual premium on te policy No. 11973?

A. $40.08.

Q. And when was that policy put in force?

A. November, 1932.

Q. November, 1932. How long did it remain in force?

A. It remained in force until August, 1944.

Q. Until when?

A. August, 1944.

Q. Were the annual premium payments made throughout that period of time?

A. Yes, sir, they were.

Q. Do you have a record of what happened to the policy in 1944?

A. Yes. The policies were converted into paid 826 up insurance.

Q. Now, we are talking about policy No. 11973, right?

A. Both of them.

Q. Now, with respect to policy No. 12607 on the life of Paul DeLucia, what is the annual premium on that?

A. $127.80.

Q. $127.80?

A. Yes, sir.

Q. And when did that policy go into existence?

A. January, 1934.

Q. January, 1934?

A. Yes.

Q. How long did the policy remain in force?

A. Until August of 1944.

Q. What was the date in 1944?

A. August of 1944.

Q. August of 1944.

During that time, do your records show that the annual premiums were paid on that policy?

A. Yes, sir.

Q. And what happened to the policy in January, 827 1944?

A. It was converted into paid up term insurance.

Q. Now, Mr. Coccia, with reference to policies issued on the life of Nancy E. DeLucia, do you have a record of a policy No. 11973?

A. Yes, sir.

Q. What is the amount of that policy?

A. $1,000.

Q. What is the annual premium on it?

A. $22.56.

Q. On what date do your records indicate the policy was issued?

A. November, 1932.

Q. How long did it remain in force?

A. Until August, 1944.

Q. What happened to it at that time?

A. It was converted into paid up term.

Q. Do your records reflect that the annual premium was paid for each year until the conversion policy?

A. Yes, sir.

Q. Mr. Coccia, I neglected to ask you what the face amount of policy No. 12607, on the life of Paul DeLucia, was.

828 A. $5,000.

Q. Now, will you look at your record there of policy No. 12606 on the life of Nancy DeLucia?

A. Yes, sir.

Q. And what is the face amount of that policy?

A. $4,000.

Q. When was it issued?

A. January, 1934.

Q. What was the annual premium?

A. $80.64.

829 Q. Do your records indicate the annual premium was paid until—pardon me. How long did the policy remain in force?

A. Until August of 1944.

Q. And then, was it converted to term insurance?

A. It was converted to paid up term insurance.

Q. Do your records indicate the annual premium was paid throughout all those years?

A. Yes.

By Mr. Barnett: Your Honor, I would like to read parts of these documents.

Government's Exhibit No. 73, ladies and gentlemen, is captioned:

"Application for beneficial membership in Italo American National Union."

Dated November 25, 1932.

"My name is Paul DeLucia."

The words "my name" are printed and the words "Paul DeLucia" are printed in longhand.

"I reside at 410 South Austin, Oak Park, State of Illinois.

"I was born at Naples, State of Italy, on the 7 day of July, 1898.

830 "My age at nearest birth day is 34 years.

"My occupation is that of Continental Food Store.

"I request certificate for $1500.00 be issued to me. I direct that in case of my death, all benefits to which I may be entitled from the Italo American National Union be paid to: $1500.00, Nancy E. DeLucia, wife.

"Signed: Paul DeLucia.

"Signed in the presence of: J. Imburgio."

By Mr. Barnett:

Q. Mr. Coccia, are you acquainted with the J. Imburgio whose signature appears on this application?

A. Yes, sir.

Q. What is his full name?

A. Joseph Imburgio Bulger.

Q. And do you see him in the court room?

A. Yes, sir.

Q. Will you point him out to us, please?

831 Is it the gentlemen that rose?

A. Yes.

Q. Thank you.

By Mr. Barnett: Government's Exhibit No. 74, ladies and gentlemen, is a similar application for insurance in the Italo American National Union.

It is dated January 15, 1934, and it reads:

"My name is Paul DeLucia. I reside at 410 South Austin, Oak Park, Illinois.

"I was born at Naples, Italy, on the blank day of July, 1898.

"My age at nearest birthday is 36 years. My occupation is that of Continental Food Store.

"I request that certificate for $5,000.00 be issued to me. The names of beneficiaries, for $5,000.00, Nancy E. DeLucia, wife.

"Signed" in longhand "Paul DeLucia."

"Signed in the presence of: J. Imburgio.

832 Government Exhibit No. 75-A is an application for beneficial membership in the Italo American National Union in behalf of Nancy Emily DeLucia, which is dated November 21, 1932.

"My name is Nancy Emily DeLucia. I reside at 410 South Austin in the State of Illinois. I was born at Naples, Italy, the 2nd day of October, 1905. My age at nearest birthday is 27. My occupation is that of housewife. I request ordinary life certificate for $1,000.

"Beneficiaries: Paul DeLucia husband."

Signed: "Nancy E. DeLucia." And signed in the presence of "J. Imburgio."

Government Exhibit No. 76-A in a similar application for insurance on behalf of Nancy DeLucia, dated January 15, 1934, and the same information concerning herself, place and date of birth. It says:

833 "I am employed by home. Request certificate for $4,000."

Beneficiary named as "Paul DeLucia, husband."

Signed: "Nancy E. DeLucia" and signed in the presence of "J. Imburgio."

Exhibit No. 75-B is entitled: "Italo American National Union Request for Paid Up Term Insurance."

Then it recites the facts which it then states:

"Now, therefore, I hereby request that my said benefit certificate No. 11972 be converted into paid up term non-participating insurance,"

et cetera, and it is signed, "Nancy DeLucia" under date of August 3, 1944.

Government Exhibit No. 76-B is a similar document signed by "Nancy DeLucia" in connection with benefit certificate No. 12606.

By Mr. Barnett:

834 Q. Mr. Coccia, you stated that the policies on Paul DeLucia were also converted at the same time as the policies to Nancy DeLucia?

A. Yes, they were.

Q. Do you have available in your records the applications for the conversion of Paul DeLucia?

A. No, I haven't. They are in the hands of the Government.

835 By Mr. Barnett: That is all I have.

By Mr. Stewart: No cross examination, your Honor.

By Mr. Green: Motion to strike the entirety of the testimony of this witness as having no bearing on the defendant Bulger.

By the Court: Same ruling.

Anything further, Mr. Barnett?

By Mr. Barnett: No, that is all, your Honor.

By the Court: Thank you, sir.

By Mr. Barnett: Oh, I do have another question, if your Honor will permit me.

By Mr. Barnett:

Q. Mr. Coccia, those policies that were converted to paid up term insurance, are they still outstanding?

A. No, they were reconverted to regular life insurance.

Q. To regular life insurance?

A. Yes, sir.

Q. They were converted from life insurance, were they not?

836 A. No. After they were converted to term insurance, they were reconverted years later to regular insurance.

Q. Do you have a record of that, when they were converted?

A. No, but the payments have been made. They have been made regularly.

Q. In 1944, they were converted to paid up term insurance, right?

A. Yes, sir.

Q. And what happened after that?

A. Well, after several years, the request was made to reconvert, and we reconverted to regular life insurance again.

Q. Do you have a record of when that took place?

A. I don't have that here with me.

Q. Do you know what year it was that took place?

A. I would say 1945 or 1946.

Q. It was reconverted into ordinary life in 1945 or '46?

A. That is right. I am not sure about the date.

Q. Are the policies still in force?

A. Yes, sir.

Q. Do you have the record in your office, Mr.

837 Coccia?

A. If you will let me look, maybe I have it here. They were reconverted in April, 1951.

Q. April, 1951?

A. Yes.

By Mr. Barnett: Thank you. All right. That will be sufficient.

(Witness excused.)

By Mr. Green: If your Honor will pardon me for a moment? You may proceed without me.

THOMAS R. JAMES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

By Mr. Barnett: Your Honor, this witness is slightly out of sequence, but he is from out of town so we would like to call him at this time.

By the Court: All right.

Direct Examination by Mr. Barnett.

Q. Will you state your name, please?

838 A. Thomas R. James.

Q. Where do you live, Mr. James?

A. I live at 825 North Osborne Street, Janesville, Wisconsin.

Q. What is your occupation?

A. I am general manager of a construction firm.

Q. In Janesville, Wisconsin?

A. In Janesville.

Q. What is the name of the firm?

A. The name of the firm is T. S. Willis.

839 Q. How long have you been in that position, Mr. James?

A. I have been in that position with Mr. Willis since 1945.

Q. Prior to that position, how were you employed?

A. I was employed in Chicago by the Avery Brundage Company, another construction firm.

Q. How long were you employed by Avery Brundage & Company?

A. I was employed from 1923 until 1945.

Q. What was the business of Avery Brundage?

A. Avery Brundage was a general building contractor.

Q. What was your position with them?

A. My position was practically everything from office boy to estimator to project manager to manager.

Q. What was your position with the Avery Brundage Company during the years 1938 and 1939?

A. I was one of the cost estimators.

Q. In connection with your duties with Avery Brundage & Company in 1938 and 1939, did you have to do with any work on a building at 812 Lathrop Avenue in
840 Chicago, Illinois?

A. In River Forest, yes, I did.

Q. Yes, River Forest.

Do you now who the owner of that building was?

A. The plans said "Paul DeLucia."

Q. What specifically did you do in connection with that work?

A. First we picked up the drawings from the architect's office, Schmidt, Garden & Erikson, and worked up the cost estimates of the amount of money involved.

Q. Can you raise your voice a little bit, please?

A. We picked up the plans and specifications from Schmidt, Garden & Erikson, architects, and worked up a cost estimate on the cost involved.

Q. I hand you what has been marked Government Exhibit No. 109, and ask you if those are the architect's drawings which you have just referred to?

A. These are the tracings from which the drawings that we used were made.

Q. Those are the original tracings?

841 A. Right.

Q. What are the drawings called that you use on the job?

A. Blueprints.

Q. They are made from these tracings?

A. Right.

Q. You recognize those tracings, do you?

A. I recognize them.

Q. After drawing up your estimate of costs, what did you do in connection with this work?

A. We received a contract through the architect's office to proceed with actual construction.

Q. What was the nature of the construction that you were called upon to perform?

A. It consisted largely of a rear two story addition with a sun room on the first floor and a bath room and bedroom, together with dressing rooms on the second floor, plus incidental remodeling.

842 Q. Are the details of that work set forth in these drawings, Government's Exhibit 109?

A. Most of the work is shown on the drawings.

By Mr. Barnett: Your Honor, I will offer in evidence Government's Exhibit No. 109.

By Mr. Stewart: Your Honor, may we object, in the interests of holding the record down to something within reason, it is an expenditure, and a witness or somebody can tell us the amount. We don't need to look at the plans. It might just be confusing.

By the Court: Well, if you will stipulate to his testimony.

By Mr. Stewart: I will be glad to.

By the Court: On what was spent and who paid it, I think I will honor your objection.

By Mr. Stewart: I will be glad to. If Mr. Barnett will furnish us with the amount, we will be glad to.

By the Court: Suppose you proceed with the
843 testimony, and if there are no objections, I may honor his objection.

By Mr. Barnett:

Q. Mr. James. what are some of the other things—

you were to build a sun room on the back of the house, is that correct?

A. That is right.

Q. And the upstairs, a bedroom?

A. One bedroom and a bathroom and dressing rooms.

Q. Were there any changes in windows throughout the building?

A. All the windows, all the wood windows in the existing house were replaced with steel casement sash.

Q. And the manufacturer of that sash was?

A. That was Hopes Windows of Jamestown, New York.

Q. Is that substantially the work that was done on the house?

A. That is substantially the work that was done.

Q. Was that work performed?

A. It was done.

Q. During what period of time was it done?

A. We received the contract late in 1938 and 844 started work early in 1939.

Q. How long did you continue performing the work until you had completed?

A. I believe the work was completed in June or July of 1939.

Q. If you recall, what was the approximate total cost of this addition on the house?

A. The total cost of all the work was about $30,000.00.

Q. Now did you have anything to do with collecting the payments on this work?

A. I did.

Q. On how many different occasions, if it was more than one, how many different occasions did you collect for payment on the work?

A. I would say it was six or seven times.

Q. Will you describe for us the manner in which a

contractor receives payment with respect to completion of work?

A. On this particular contract?

Q. In general, I mean.

A. Yes. We were paid 90 per cent of the cost of the work as it progressed, and we made application once a month, at the end of the month, for the work done
845 during that month.

Q. On this particular job you made application for work as it progressed to whom?

A. To the architects.

Q. And the architect's name was?

A. Schmidt, Garden & Erikson.

Q. After making application for the payment, what happened next?

A. The architects checked this application for payment and approved it. He then issued a certificate which stated that we were entitled to a payment of so many dollars at that time.

846 Q. And in this particular time, on five or six occasions you received payments in that manner, did you?

A. We did.

Q. Now, in order to receive the payments, what did you do on this job?

A. On this particular job, we received a call from the architects to pick up our payment at their office.

Q. Was that customary?

A. Many times we get—

Q. I mean, was that customary in your business?

A. No. On other work we just received the payments in the course of general business through the mail.

Q. In check form?

A. In check form.

Q. In this case, after receiving the call from the architects' office—incidentally, who at the architects' office would call you, if you know?

A. Sir?

Q. Who at the architects' office would call you, 847 if you know?

A. I don't know.

Q. After receiving the call, what would you do?

A. I personally went over to the architects' office and picked up the payment.

Q. From whom did you pick up the payment?

A. From the receptionist.

Q. Well, how was the payment given to you?

A. The payment was given to us in an envelope.

Q. Well, what did the envelope contain?

A. The envelope contained currency.

Q. Did the currency have any particular denominations?

A. Well, if the payments were large, the bills were large.

Q. By that you mean what?

A. Well, I would say, to the best of my recollection, it was in thousand dollar bills.

Q. And some of the payments were in what amounts, if you can recall?

A. We started out rather easily. The first payment was about $3,200, and the next month it was about $8,000, and then $6,000 and $6,500 and then it tapered down 848 to the final payment.

Q. And the whole amount of the job was paid for in this manner, was it?

A. Yes, sir.

Q. During the course of the work on that building, did you have any dealings with the owner of the building?

A. I had no dealings with him. I met him once at the job site.

Q. And your dealings were with whom?

A. With the architects, Schmidt, Garden & Erikson.
Q. Who, particularly, for the architects' firm?
A. Mr. Hugh Garden.
By Mr. Barnett: That's all, your Honor.
By Mr. Stewart: No cross.
By Mr. Green: No cross.
By the Court: You may stipulate, if I may recite it, that the work the witness testified to was done according to regular drawings, and, on that stipulation, the drawings may be withdrawn.
By Mr. Stewart: We join in that, your Honor, and we can save the trouble of bringing in the architects,
849 or anything like that. We don't dispute the amounts.
If the prosecutor will furnish the amounts, we will agree to it.
There is cross examination.
By Mr. Barnett: You may go, Mr. James.
By the Witness: Thank you.

(Witness excused)

850 STANLEY A. YAEGER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you state your full name, please?
A. Stanley A. Yaeger, Y-a-e-g-e-r.
Q. Y-a-e-g-e-r?
A. Yes.
Q. Where do you live, Mr. Yaeger?
A. 2508 Wesley Avenue, Berwyn.
Q. What is your occupation?
A. Banker.
Q. With what bank are you connected?

A. Oak Park National.

Q. What is your position at the Oak Park National Bank?

A. Vice president.

Q. How long have you been in that position?

A. Twenty years.

Q. In your position at the Oak Park Bank, do you have custody of, and control of certain records, or
851 access to certain records?

A. That is right.

Q. What is the nature of those records?

A. Trust records and other bank records.

Q. Mr. Yaeger, did you have an escrow file in the name of DeLucia?

A. I did.

Q. When did you have that escrow file at your bank?

A. That was in about 1938.

Q. 1938?

A. Yes.

Q. Can you tell us the circumstances under which you opened the escrow account?

A. The broker brought in—

Q. Can you speak up a little bit?

A. A broker brought in a contract and he wanted to have an escrow in the bank and they deposited in the escrow a warranty deed and $2,000.00 in cash.

Q. Will you describe for us a little bit, so we understand, what the function of the bank is in such an operation such as this?

A. Well, it is to get the parties together so they
852 have a place in which to deposit various things and to draw up an agreement to coincide with the contract.

Q. And is one of the purposes of it so you will hold the money of the purchaser until title is shown to be good by the seller?

A. That is right.

Q. And then all the money is paid in to you by the purchaser, is it?

A. That is right.

Q. And then you make the disbursements out to the seller of the property?

A. That is right.

By Mr. Barnett: Miss Reporter, will you mark this document as Government's Exhibit No. 82 for identification, please?

(Thereupon said document was marked Government's Exhibit 82 for identification.)

By Mr. Barnett:

Q. Mr. Yaeger, I hand you documents which have been marked for identification Government's Exhibits Nos. 77, 78, 79, 80, 81 and 82 and ask you if those 853 documents are from your escrow trust file in connection with this transaction that you just testified about.

A. They are.

Q. And are they documents which were kept in the regular and ordinary course of your business?

A. That is right.

Q. Is it your custom to keep such documents?

A. That is right.

By Mr. Barnett: Your Honor, I would like to offer at this time Government's Exhibits Nos. 77, 78, 79, 80, 81 and 82.

By Mr. Stewart: No objection.

By Mr. Barnett: No objection.

By the Court: No objection?

Mr. Stewart. No objection.

By the Court: It may be received, subject to the same conditions as outlined before.

By Mr. Green: May we see it?

By Mr. Stewart: If your Honor will make that statement once in a while, then we don't need to interrupt at all.

By the Court: I have got to look at you to see
854 if you are nodding or shaking your head.

By Mr. Stewart: All right.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 77, 78, 79, 80, 81 and 82.)

By Mr. Barnett:

Q. I will hand these back to you, Mr. Yaeger, so that you may refresh you recollection.

Mr. Yaeger, this transaction took place when?

A. In 1938.

Q. And approximately what month in 1938?

A. September 21st of 1938.

By Mr. Gorman: Mr. Yaeger, will you keep your voice up, please?

By Mr. Barnett: September 21, 1938.

By the Witness: That's right.

By Mr. Barnett:

Q. What was the address of the property involved?

A. That was on 812 Lathrop Avenue. River Forest.

855 Q. Do you have a record of who the seller of that property was?

A. We do.

Q. Who was the seller?

A. Hannah M. Smith.

Q. Now, who did you deal with so far as the purchaser is concerned, on this property?

A. Well, the purchaser was Nancy DeLucia.

Q. And did you deal with Nancy DeLucia?

A. I did.

Q. Now, what was your first dealing with Nancy DeLucia? What occurred on the first time you met Nancy DeLucia?

A. Well, she deposited $2,000 as earnest money.

Q. With you, personally?

A. With me, personally.

Q. And was that in currency or in check form?

A. Currency.

Q. Did anything else occur on that occasion? Did she sign a contract at that time?

A. No. The contract, it was signed outside.

Q. And was the contract brought in to you?

A. The contract was brought in to us.

856 Q. Do you have the contract here?

A. Yes.

Q. What is that exhibit number?

A. That is 80.

Q. That is Exhibit 80?

A. Yes.

Q. Now, did you prepare a proposed closing statement?

A. I did.

Q. Do you have that?

A. I do.

Q. What exhibit number is that?

A. That is 78.

Q. That is Exhibit No. 78?

A. Yes.

Q. When was that prepared?

A. You mean that date that I prepared this?

Q. Yes.

A. Well, that was subsequent to the date of the escrow agreement, which would be after September of 1938.

Q. And what is Exhibit No. 77?

A. 77 is a memo.

857 Q. Which started the whole transaction?

A. No. It is just a plain memorandum.

Q. But it is in connection with this deal?

A. That is right.

Q. Now, after Mrs. DeLucia made the down payment of $2,000, how much more remained to be paid to complete the purchase price?

A. Some $23,000.

Q. And did you subsequently see Mrs. DeLucia again?

A. Did I see Mrs. DeLucia?

Q. I say, did you see Mrs. DeLucia again after she paid the $2,000?

A. I did.

Q. How long after the first occasion?

A. Oh, maybe a week or so.

Q. Which would bring us up to about what date?

A. October 7th of 1938.

Q. October 7th.

And, is that the date of the closing?

A. That is about the date of closing.

Q. Did that take place in your office?

A. It did.

858 Q. And did you receive any more sums of money from Mrs. DeLucia on that date?

A. Received the $22,600.00.

Q. And in what denominations or how did you receive it, cash, currency, or check?

A. That was cash.

Q. And in what denominations were the bills?

A. There were twenty-three thousand dollar bills.

Q. Did you make change?

A. We made change for four hundred.

Q. Did that complete the total amount of money that Mrs. DeLucia was obliged to pay in order to make the purchase?

A. Our records indicate that on the following day that an additional escrow deposit was made of $783.31.

Q. And that record which you are referring to is your escrow record, Exhibit No. what?

A. 81.

Q. That document shows the receipt of the money. Does it show the disbursements, also?

A. It does.

Q. So that you clear out your account?

A. That is right.

859 By Mr. Barnett: I would like to read a portion of this, your Honor.

Government's Exhibit No. 78 is a longhand sheet of paper written in pencil.

By Mr. Barnett:

Q. Is that written in your handwriting, Mr. Yaeger?

A. It is.

By Mr. Barnett: The lefthand side of that page reads "Buyer," and the right hand side reads "Seller."

Under the "Buyer" it reads, "Paul Salvi allowed credit for 1931 taxes and other matters. Sales price, $25,000.00. Commission, R. C. McCabe."

By Mr. Barnett:

Q. Was he the real estate broker?

A. He was.

Q. And the name "Paul Salvi", was that Mr. DeLucia at that time?

A. I don't know.

Q. Is this written in your handwriting?

A. It is.

860 By Mr. Barnett: The seller's name is "Hannah M. Smith" and the sales price is $25,000.00, and there are other details concerning expenses.

By Mr. Barnett:

Q. Government's Exhibit No. 77 is a yellow sheet of paper which is contained in your file also, Mr. Yaeger?

A. That was in the file.

By Mr. Barnett: That reads "Mrs. Hannah M. Smith, seller, 812 Lathrop Avenue, River Forest. Paul Salvi, buyer, Chicago. $25,000.00 selling price. Payable cash. Mrs. Smith to remain in house to up and including November 17, 1938."

By Mr. Barnett:

Q. Now, Mr. Yaeger, I hand you a document which has been marked Government's Exhibit No. 83 which is a photostatic copy of a trust agreement which I have the original of.

Have you compared them?

A. I have.

Q. Will you describe for us what the nature of 861 that trust agreement is?

A. The what? I did not get that.

Q. Will you describe for us the nature of the trust agreement?

* * *

862-864 * * *

865 By Mr. Barnett:

Q. I will hand you Government's Exhibit No. 85, Mr. Yaeger, which is a photostatic copy of another trust agreement, and ask you if that is part of the records of your bank?

A. It is.

Q. What does that trust agreement refer to?

A. That trust agreement is the same form as the other one only it refers to property held in Kendall County, Illinois.

Q. The farm land?

A. That is farm land.

Q. Did your bank act as the legal holder of that property?

A. We did.

Q. Beginning on what date?

A. On April 8th of 1948.

Q. Who were the beneficiaries?

A. Nancy and Paul DeLucia.

Q. Can you tell us how long your bank continued as trustee of that property?

A. No, I cannot.

By Mr. Barnett: Your Honor, I will offer Gov-
866 ernment's Exhibit No. 85, which is the land trust on the farm.

By the Court: Same ruling.

(Said document, so offered and received in evidence, was marked Goverment's Exhibit 85.)

By Mr. Barnett:

Q. Mr. Yaeger, the name of the bank with which you are associated is the Oak Park National Bank, is that correct?

A. That is correct.

Q. How long has that bank been known as the Oak Park National Bank?

A. Since January 2 of 1945.

Q. And prior to that date, what was it known as?

A. Prairie State Bank.

Q. Do you have still in your custody and control records of the old Prairie State Bank?

A. Yes, we do.

Q. I will hand you Government's Exhibit No. 87, Mr. Yaeger, and ask you if that is your bank's record of cashier's checks sold by the bank or purchased by others from the bank?

867 A. It is.

Q. I will hand you Government's Exhibit No. 86,

which is a cashier's check. It has on the top of it Prairie State Bank, and I ask you if that check was purchased according to the records at the Prairie State Bank?

A. It was.

Q. On what date was it purchased according to the records?

A. It was purchased on February 25, 1943.

Q. To whom was the check made payable?

A. Prudential Company of America.

Q. Do you records disclose the purchaser of the check?

A. Yes, they do.

Q. Who was the purchaser?

A. Paul DeLucia.

Q. What is the amount of the check?

A. $9400.00.

Q. Was that check returned to your bank after it was issued, cancelled?

A. That is right.

Q. Does it bear an endorsement on the reverse side?

868 A. There is an endorsement, Prudential Insurance Company.

By Mr. Barnett: Your Honor, I will offer Government's Exhibits 86 and 87, and submit photostatic copies thereof and withdraw the originals.

By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 86 and 87.)

By Mr. Barnett: Your Honor, I will offer at this time Government's Exhibit No. 89-A, which is an exemplified copy of the recorded trust deed. If we subsequently agree on it, I will be happy to withdaw it if Mr. Stewart doesn't want it in the record.

By the Court: I have no way of indicating as to what to expect a stipulation upon for fear that I might inadvertently express an opinion. I would rather refrain from doing it. Is that clear, Mr. Stewart?

869 By Mr. Stewart: I understand, your Honor.

By the Court: I mean, I don't want to say you ought to stipulate on this document, and not on this one, because, not knowing the details of it, I don't want to express any opinion. The stipulation has got to be between you two. I merely pass upon its admissibility.

I would like to encourage brevity, but of course, that is entirely up to you.

By Mr. Barnett: Suppose we go ahead with the documents?

By the Court: If he stipulates, you may withdraw them.

By Mr. Barnett: I am offering Exhibit 89-A, which is the recorded trust deed, and I am offering Government Exhibit No. 89-B, which is a recorded release deed with reference to the Oak Park National Bank, your Honor, in connection with this property.

870 Is there a ruling?

By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 89-A and 89-B.)

By Mr. Barnett:

Q. The two trust that we spoke of, Mr. Yaeger, which are trust numbers of 1932 and 1933, your bank acted as the trustee for these properties holding them for the DeLucias, is that correct?

A. That is correct.

Q. One property was the River Forest house and the other property was the farm in Kendall County?

A. That is right.

Q. Now, can you recall how long your bank remained as the trustee for these properties?

A. No, I couldn't say definitely.

Q. Can you say approximately?

A. I would say the farm, I think we deeded the farm out in 1950 or 1951.

Q. In early 1951?

A. It could be, yes, early 1951.

871 Q. When you say you deeded the farm out, you mean at that time the farm was sold?

A. It was sold.

Q. How about the River Forest property?

A. I don't recall.

Q. Was that still active throughout the year 1950?

A. I could not say definitely.

Q. Do you mean that you think you may have disposed of the property before the end of 1950?

A. I don't know.

Q. Do you have a record from which you can check that?

A. I think we can find a record on it.

Q. Do you have a record here in the court room?

A. No, I do not.

By Mr. Stewart: Your Honor, if Mr. Barnett knows the date the house was sold, we will be glad to agree to it.

By Mr. Barnett: All I want is an agreement that the building remained in the trust throughout the year 1950.

By Mr. Stewart: That is a fact.

By the Court: I beg your pardon?

872 By Mr. Stewart: That is a fact. He doesn't need to bring any other witnesses to prove that.

By Mr. Barnett: That is all, Mr. Yaeger.

By Mr. Stewart: No cross.

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873-876 * * *

877 **FRANCES M. BLAKELY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:**

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?
A. I beg your pardon?
Q. Will you tell us your full name, please?
A. Frances M. Blakely.
A. F-r-a-n-c-e-s.
By the Court: Can you hear her back there?
Will you please speak a little louder, please?
By the Witness:
A. Frances, F-r-a-n-c-e-s. M is the initial, B-l-a-k-e-l-y.
Did you get it?
By Mr. Barnett:
Q. Where do you live, Miss Blakely?
A. At the moment, I live at the LaSalle Hotel.
878 Q. In Chicago, Illinois?
A. I beg your pardon?
Q. In Chicago, Illinois?
A. Yes.
Q. Where are you employed?
A. Where am I what?
Q. Employed. Where do you work?
A. The LaSalle Hotel. We have an office there.
Q. And by whom are you employed at the LaSalle Hotel?
A. By the real estate company of Roanoke Real Estate Company.
Q. Are they the owners of the LaSalle Hotel?
A. That belongs to Mr. Brundage. It is Avery Brundage, d/b/a Roanoke Real Estate Company.
Q. And have you been associated with Mr. Brundage for some years?

A. Yes, 25, at least.

Q. What is that?

A. 25.

By the Court: 25 years, at least.

By Mr. Barnett:

Q. During the years 1938 and 1939, were you 879 employed by Mr. Brundage?

A. Yes.

Q. What was his business at that time?

A. Well, various things. One was the Avery Brundage Company.

Q. Was that a construction company?

A. Yes, that was, yes, a construction company.

Q. And what was your job with Mr. Brundage then?

A. I was secretary of the company and also secretary to Mr. Brundage.

Q. Did you keep records of payments made on various jobs that were under construction?

A. I kept the final payments, yes, the payments that went into his final books. I did not keep the records of the construction company. I only kept the totals that came in, the bills, understand, and the checks, and so forth.

I did not work in the construction company.

Q. I see.

I hand you Government Exhibit Nos. 114 and 113.

A. Yes.

Q. I ask you if those documents were written in 880 your hand?

A. Yes. This was written by me. There were the final figures that came in. These were part of his personal books. In fact, we had a cost on every job that was done, the final cost, and this is the cost of the DeLucia job, and these are the payments that came in.

Q. You are now referring to Exhibit No. 113 when you say "These are the payments that came in"?

A. I beg your pardon?

Q. I say, you are now referring to Government Exhibit 113?

A. Yes.

Q. When you put your finger on the sheets and when you said, "These were the payments that came in"?

A. Yes. Here it is. These are the payments that came in, the various ones, (indicating). There are only a few.

And then, the cost went against those payments.

Q. You have a record of both the costs to your firm and—

881 A. The cost, and the income.

Q. And the income?

A. Yes.

882 By Mr. Barnett: Your Honor, I will offer Government's Exhibits 113 and 114.

By the Court: The same ruling. They may be received subject to the general objection by Mr. Bulger.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 113 and 114.)

By Mr. Barnett: I would like to read from Government's Exhibit 113, which reads at the top:

"DeLucia residence, 1939."

And then, in the date column "February 18th" and a payment of $3,272.00; March payment of $8,000.00; April, a payment of $6500.00; May, a payment of $6,000.00; July 7th, a payment of $5500.00 and September, final payment of $873.90, for a total of $30,145.90.

I have no further questions of Miss Blakely, your Honor.

By Mr. Stewart: No cross.

By the Court: Thank you very much.

By Mr. Barnett: You may step down, Miss
883 Blakely.

(Witness excused.)

By Mr. Barnett: Your Honor, for the record, I am substituting photostatic copies of Exhibits Nos. 113 and 114 and they have been marked.

By the Court: There is no objection and they may be so substituted.

By Mr. Barnett: Mr. Gibson.

SIDNEY E. GIBSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Sidney E. Gibson.

Q. Where do you live, Mr. Gibson?

A. 2240 Granville, Chicago.

Q. Will you raise your voice just a little?

A. 2240 Granville, Chicago.

Q. What is your occupation?

A. I am an assistant cashier at the Northern Trust Company.

884 Q. And in that position, do you have custody and control of the bank records of the Northern Trust Company?

A. I do.

Q. Have you been subpoenaed to bring certain records into court with you?

A. I have.

Q. Among those records, do you have a record of an account in the name of Mr. Paul DeLucia or Mrs. Nancy DeLucia?

A. I do.

Q. Without going into that, Mr. Gibson, I will hand you Government's Exhibit No. 90 and Government's Exhibit No. 91 and ask you if Government's Exhibit No. 90 is the signature card or a photostatic copy of the signature card on that account.

A. It is.

Q. And what is Government's Exhibit No. 91?

A. That is ledger sheets supporting the account of Mr. DeLucia and Mrs. Nancy DeLucia.

Q. When was that account opened?

A. This account was opened on January 28, 1936.

Q. When was it closed, if it was closed?

A. January 4, 1949.

885 Q. I will hand you Government's Exhibit No. 93 and ask you if you can identify those documents as being proof exhibits.

A. These are the ledger sheets of the DeLucia farm account.

886 Q. That is another bank account?

A. That is another bank account.

Q. On what date was that account opened?

A. That was opened on January 4, 1949.

Q. Can you raise your voice just a little, Mr. Gibson? I am having a little trouble hearing you even here.

A. This account was opened January 4, 1949.

Q. Is it still open or was it closed?

A. No, this account was closed April 10 of 1951.

Q. Now I hand you Government Exhibit No. 92 and ask you if that is the photostatic copy of the signature card on the account that you have just described?

A. Yes, that is the partnership card of the DeLucia farm account.

Q. Who are the authorized signatures on that account?

A. Mr. Paul DeLucia and Mrs. Nancy DeLucia.

Q. These ledger sheets which I have shown you, that is, the photostatic copies of the ledger sheets that I have shown you, Mr. Gibson, reflect what in connection
887 with the accounts; that is do, they reflect checks?

A. All the deposits and withdrawals on the account.

Q. Were these checking accounts?

A. These were both checking accounts, yes.

Q. So withdrawals would be by the issuance of checks, right?

A. Checks, yes.

Q. Were these records kept in the ordinary business of your bank?

A. They were.

By Mr. Barnett: Your Honor, I offer Government Exhibits 90, 91, 92 and 93.

By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 90, 91, 92 and 93.)

By Mr. Barnett:

Q. Mr. Gibson, do you have among the records that you have there a record of cashier's checks purchased at your bank?

A. Yes, we do.

Q. I hand you Government Exhibit No. 94, which
888 is a photostatic copy of a check requisition, I believe, and ask you if I have correctly described it?

A. Yes, this is our cashier's check requisition.

Q. Is it the custom at your bank to have one of these filled out when a cashier's check is being purchased?

A. That is correct.

Q. Now, I hand you Government Exhibit No. 95, which is a photostatic copy of a cashier's check and ask

you if Exhibit No. 95 was purchased as a result of the requisition which was made out?

A. That is correct. This is the check.

Q. And your records disclose that that check was purchased by whom?

A. This check was puchased by a person by the name of Alfred J. Cilella.

Q. And to whom was the check made payable?

A. The Prudential Insurance Company of America.

Q. What is the amount of the check?

A. $30,122.59.

Q. Was that check returned to your bank in a cancelled condition?

A. The check was returned and paid by us and 889 cancelled.

By Mr. Barnett: Your Honor, I will offer Government Exhibits 94 and 95.

By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 94 and 95.)

By Mr. Barnett:

Q. Will you look at that check requisition again, Mr. Gibson?

Do you find any initial on the requisition itself?

A. It is the initial of the teller and the man who signed the check is also on there.

Q. Any other initials?

A. No other person's initials, no.

Q. Are there any other initials on it indicating the nature of the transaction?

A. Well, what was received for the transaction?

Q. Yes? How many initials do you find on there?

A. There are initials of what was taken in payment.

890 Q. What are those initials?

A. Also the initials of the teller and the initials of the signer.

Q. What are the initials of what was taken in?

A. This is a currency transaction. Currency was taken in.

891 Q. What initals do you find on there that indicate that?

A. C. Y. The teller puts that on as a normal course.

Q. That indicates currency?

A. Yes.

Q. Before going on the stand, Mr. Gibson, did you have an opportunity to examine the ledger of Paul DeLucia's bank account with your bank?

A. Yes.

Q. Did you find a withdrawal on March 13, 1949? Did you find any withdrawals in connection with that check for the amount of $30,122.59?

A. That I didn't look at. I can probably check it on the sheet here if you wish.

Q. If you will, on March 13.

A. That amount was?

Q. The amount of the check was $30,122.59.

A. There is no listing of an amount like that on the ledger sheet.

Q. For that date March 13?

A. For the account.

Q. Is there a deposit of any such sum on that date?

892 A. No.

By Mr. Barnett: No further questions of Mr. Gibson, your Honor.

By Mr. Stewart: No cross, your Honor.

By the Court: Thank you very much.

(Witness excused.)

By Mr. Barnett: Your Honor, at this time I would like to read another stipulation.

Stipulation No. 16.

It is further agreed by and between the parties hereto that if Alfred J. Cilella were called to testify in this case, he would testify that he is an attorney with offices at 1 North LaSalle Street, Chicago, Illinois;

That in February or March, 1942, Paul DeLucia came to Cilella's office, which was then at 134 South LaSalle Street, Chicago, and retained him to represent DeLucia in the purchase of a farm in Kendall County, Illinois;

That on the morning of March 13, 1942, Cilella and
893 DeLucia went together to the Northern Trust Bank in Chicago, Illinois;

That DeLucia handed Cilella $30,122.59 in currency, consisting of thirty one thousand dollar bills and the balance in smaller bills;

That Cilella with this currency purchased a cashier's check at the bank, which is Government's Exhibit No. 95;

That this check was thereafter turned over to a representative of Prudential Insurance Company as part of the purchase price of the Kendall County farm;

That the closing of this deal took place in Cilella's office on March 13, 1942;

That subsequently Cilella billed DeLucia for $528.25 for expenses incurred by Cilella on behalf of DeLucia in connection with closing this deal;

That on June 24, 1942, Cilella received payment of the $528.25 from DeLucia; that Cilella received no fee for his services in this transaction.

894 By Mr. Green: Let the record show the general objection of Mr. Bulger.

By the Court: It may so show.

895 By Mr. Barnett: Mr. Cusick.

WILLIAM L. CUSICK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you state your full name, please?
A. William L. Cusick.
Q. Where do you live, Mr. Cusick?
A. I live at Joliet.
Q. The City of Joliet?
A. City of Joliet, yes.
Q. What is your address?
A. 523 North Raynor Avenue.
Q. Can you raise your voice just a little?
What is your occupation?
A. I am a real estate broker.
Q. How long have you engaged in that profession?
A. About 30 years.
Q. Have you ever had occasion to do business with Mr. Paul DeLucia?
A. Yes.
896 Q. Do you know Mr. DeLucia?
A. Yes.
Q. Do you see him in the court room?
A. Yes.
Q. Sitting at counsel table?
A. Yes.
Q. When did you first meet Mr. DeLucia?
A. February of 1942.
Q. What were the circumstances under which you met him?
A. Well, he come down to buy a farm and I sold him one.

Q. And what?

A. And I sold him one.

Q. Will you describe for us the first meeting that you had with him in connection with the purchase of the farm?

A. Well, I met him at the Louis Joliet Hotel in Joliet.

Q. How did you happen to meet him?

A. Well, I didn't know him, but Mr. Francis Curry made the appointment to meet him there, and Francis
897 didn't get in, so I paged Mr. DeLucia and he stepped up.

Q. And all this took place in the Louis Joliet Hotel?

A. In the lobby, yes.

Q. Did you have a conversation with Mr. DeLucia at that time?

A. Yes.

Q. What was the conversation?

A. About this farm that he purchased later.

Q. Just tell us the conversation?

A. Well, I think he asked me the price and how large it was.

Q. Did you tell him who you were?

A. Oh, yes, sir; yes.

Q. And what did he say to you?

A. Well, as I remember, I think about all we talked about was where the farm was and what the price was and how many acres in it.

Q. Were the two of you alone?

A. No, he had somebody with him, but I don't think I remember who they were. I think there was one or two gentlemen with him.

898 Q. That you didn't know?

A. No; no.

Q. All right. Did the farm have a name?

A. Well, it belonged to the Prudential Insurance Company, but I think it was known as the Hoke Farm.

Q. Did you get together on a price at that time? Was an offer of a price made?

A. Oh, yes. They had an offer, but it was rejected.

Q. I beg pardon?

A. I said their first offer was rejected.

Q. Did you make an offer at the time of the first meeting or was an offer made to you at the time of the first meeting?

A. No, there was an offer made before I met Mr. DeLucia.

Q. On behalf of Mr. DeLucia?

A. Yes.

Q. By whom was that offer made?

A. By Francis Curry.

Q. A resident of Joliet?

A. Yes.

899 Q. Was any earnest money paid in connection with that offer?

A. Yes.

Q. The first original offer?

A. That is right.

Q. Who gave you the earnest money?

A. Well, Francis Curry brought it in to the lawyer's office.

Q. In what form was it?

A. It was in the form of a draft.

Q. Is Government's Exhibit No. 97 the draft to which you had reference?

A. That is right. That is right.

Q. That is a draft in the amount of $5,000.00?

A. That is right.

Q. Subsequently did you receive another offer for the property?

A. I think the next offer was raised from $125,000.00, to, I think, $135,000.00, and I called the Springfield office and they rejected that one. So I think we called again and probably offered them, if I remember, $140,000.00. That was turned down. So then I called again the
900 third time and offered them $145,000.00, and they said they would take it.

Q. Did you have a series of meetings with Mr. DeLucia in between here when the price was raised each time?

A. Oh, yes. We were all there together.

Q. All during this time, did you hold on to this $5,000.00 draft?

A. Yes. I think I did. It was returned to me.

Q. I beg pardon?

A. It was returned to me and I kept it.

Q. When did the sale of the farm eventually take place then?

A. You mean when it was closed?

Q. Yes, not the—well, did you sign a contract on it?

A. No, the only thing I did was send down the offer to purchase.

Q. I beg your pardon. Was there a contract signed on it?

A. I don't believe there was. I hadn't anything to do with it unless the Prudential had them sign one.

901 Q. Was that draft used as part of the down payment on the farm?

A. That is right, yes.

Q. Do you know the date on which that transaction took place, the approximate date?

A. Oh, the date that I sent the draft back, you mean?

Q. No, the date on which the whole deal was closed, the approximate date on which it was all closed up.

A. Well, I think it was sometime in March, but I haven't got the date.

Q. March of what year?

A. March of 1942.

Q. Now I hand you Government's Exhibit No. 100 and ask you if you can identify this document?

A. Yes, that was the offer to purchase.

Q. Is that the original offer?

A. If this is the original offer—I thought my original offer was $125,000.00, and this figures out $135,000.00.

Q. All right. What is the date of that document?

A. This was February 9, 1942.

902 Q. Is your signature on it?

A. Yes.

Q. And that was part of this deal, was it?

A. Yes.

Q. But eventually the deal was closed for $145,000.00?

A. That is right.

Q. This property was located where, this farm that we are talking about.

A. Well, it was in about four sections in Kendall County. I think in Big Grove Township.

Q. Kendall County, Illinois?

A. That is right.

Q. Four sections is how many acres?

A. Well, four sections would be four times 640, but it wasn't—it was just a part of each section.

Q. What was the total acreage?

A. 1104 acres.

Q. Were you present at the closing of this deal?

A. No, I wasn't. I was late getting in. They closed it in Chicago here.

903 Q. They closed in it Mr. Cilella's office?

A. I think so, but I didn't get in in time.

Q. Did you arrive at Mr. Cilella's office?

A. I arrived in the hallway, and Mr. Cilella and Mr. DeLucia and Nancy DeLucia were coming down. I just met them in the hallway.

Q. I see.

What did you do after that?

A. Well, we all went to lunch together.

D. Did that end your transaction with Mr. DeLucia in connection with the purchase of this farm?

A. That is right.

Q. Did you have any further transactions with him in connection with the farm?

A. Not with that first sale. That was the end of it.

Q. Did you ever see him again?

A. Not until 1951.

Q. What happened in 1951?

A. I sold it for Mr. DeLucia.

Q. How did that come about?

A. Well, there was some man here in Chicago called me. Do you want his name? By the name of Norman
904 Steller who had been a prospect of mine for some time.

He called me and wanted a large farm. He said about two sections. He wanted to know if I had anything like that, and I said, "No, they are a little hard to find."

He said, "Well, I don't think so. I am looking at one right now that is 1104 acres."

I suspected right away it was the DeLucia farm. So as soon as he hung up, I called Paul DeLucia. I said, "Is your farm for sale, Paul," and he said, "Yes. Have you got a buyer?"

I said, "I think we have." Well, that is how we got started on that sale.

Q. Then what happened next?

A. Well, this buyer came from a bank down at Bloomington, the People's Bank at Bloomington. They had called me and told me they had a deposit, I think they said, of $100,000 laying in the bank to buy a good farm. I had taken Mr. George F. Dick, Third, I think he

is the president of the bank, and his farm manager, William Scott, to look at some farms out in Livingston County—

905 Q. Just tell us about your dealings on Mr. DeLucia's farm.

A. Well, of course, then I used the same prospect. I called the bank at Bloomington and told them I thought I had a farm that might suit.

Q. Did you take the prospect out to see Mr. DeLucia's farm?

A. No, I didn't. I took the banker and farm manager.

Q. Was Mr. DeLucia there when you took them out?

A. Yes.

Q. You showed them over the farm?

A. That is right.

Q. And in the chronology of events, after showing that farm to these two people, what happened then?

A. Well, then Mr. Condon, who was the purchaser and he and Mr. Scott—

Q. What was your connection with it next?

A. Oh, the next connection I had was Paul DeLucia called me and said that they were out there and they bought the farm.

Q. Then what happened?

A. He told me they are going to close it, I think
906 it was the Oak Park Bank here—

Q. The Oak Park National Bank?

A. National Bank. He said, "We are going to close it tomorrow, and you had better be there."

Q. This would be about what date?

A. Well, I imagine it was the latter part of February sometime.

Q. Well, there was a contract to sell entered into between Mr. DeLucia and Mr. Condon, was there not?

A. That is right.

Q. You received a copy of that contract of sale, did you?

A. That is right.

Q. Is Government Exhibit 98 a copy of that contract?

A. Yes, it is. That is the 8th day of February, 1951.

Q. That is the date the contract was signed, right?

A. Right.

Q. That is not the date of the closing?

A. No.

Q. Who was present at the time that contract was
907 signed?

A. Well, Mr. Condon was there, their attorney, Mr. Stone, and the banker, Mr. Dick, the farm manager, Mr. Scott, and a Prudential loan man, Mr. Wallace T. Philson, and myself, and two from the bank, I think Mr. Yaeger—is that his name? I believe.

908 Q. And was there a conversation at that time about mortgages?

A. Yes.

Q. Will you tell us what the conversation was?

A. Well, the Prudential already had a mortgage on the farm. I don't know just what the balance was. I think it was eighty some thousand.

And, of course, I wanted to hold the mortgage. Mr. Condon assumed the mortgage, agreed to assume it.

Q. Tell us what was said.

A. He said, "No, I have already made a commitment with some broker down in Bloomington."

So, of course, I dropped it, then. I let the Prudential take it.

Q. I can't hear you.

A. I say, I said no more about it, about the mortgage.

Q. I see. Then, in the chronology of events, what happened next after this contract was signed?

A. Well, there was some argument—oh, yes; Mr. Scott, I think, from Bloomington called me and said that some of the personal property was being sold, like some of
909 the cattle and some of the implements, I think.

So, I think I did call Mr. DeLucia and told him we would like to meet down at the farm.

Mr. Condon also came from New York and the bankers, and the farm manager.

So, we all met, then, the four of us and we straightened it all out in about two minutes.

Q. I see. Now, when did the closing take place?

A. About the middle of March, 1951.

Q. And who was present at the closing?

A. Well, Mr. Condon was there and Mr. DeLucia and, I think, Mr. DeLucia's attorney.

Q. Whose name was what?

A. Mr. Bulger. I forgot his first name. And, Mr. Wallace T. Philson from the Prudential was there.

Q. That is the Prudential—

A. Life Insurance Company.

Q. —Life Insurance Company?

A. Yes.

Q. And their connection was, that they had the mortgage?

A. Yes.

Q. Who else was there?

910 A. And, there was one or two from the bank there. I guess Mr. Stone was there again, yes. I think that is about all.

911 Q. And the whole deal was closed at that time, then?

A. That is right.

Q. The money was paid?

A. That is right.

Q. Into the bank as an escrow?

A. Yes.

By Mr. Barnett: Your Honor, I would like to offer these documents, Government Exhibit Nos. 98 and 100.

By the Court: The same ruling. They may be received.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 98 and 100.)

By Mr. Barnett: No further questions of this witness, your Honor.

By Mr. Stewart: No cross.

By the Court: Thank you very much.

(Witness excused.)

By Mr. Barnett: Your Honor, it is somebody's
912 fault, but we had better take a recess now, if we may.

By the Court: All right. Give the jurors a few extra minutes.

I would like to say this to you folks in the jury: I want to impress upon you that only what you hear from the witness stand and from the Court is competent evidence and not what you see outside of the court or even in the papers.

Again, along the same line of thinking that I have tried to impress upon you, I want you to keep your minds free and clear so that you may give all the credence and weight to the testimony as given from the witness stand.

Is that clear?

By the Jury: (In chorus). Yes.

By the Court: I hope you have a nice lunch.

(Whereupon a recess was taken in the above entitled cause until 2:00 o'clock p.m. of the same day, Wednesday, May 14, 1958.)

913 • • •

914 • • • JOHN T. GAYNOR, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. John T. Gaynor, G-a-y-n-o-r.

Q. Where do you live, Mr. Gaynor?

A. 10405 South Christiana Street, Chicago.

Q. What is your occupation?

A. I am resident attorney for the Mortgage Loan
915 Department of the Prudential Insurance Company.

Q. Was the Prudential Insurance Company subpoenaed to bring certain records in here this morning.

A. It was.

Q. Do you have those records with you, Mr. Gaynor?

A. Yes, I do.

Q. What do those records consist of?

A. I have an offer to purchase a certain piece of property in Kendall County, Illinois, from the Prudential Insurance Company by Paul DeLucia.

I have a telegram from the home office recommending or approving that sale to Paul DeLucia.

I have a Finance Committee approval of that sale to Paul DeLucia and I have a mortgage payment record.

916 By the Court: If there is no controversy on the sale or the purchase, then may I suggest that you confine yourself to the payments?

By Mr. Stewart: There is no controversy, your Honor.

By Mr. Green: None whatsoever.

By Mr. Barnett: May I offer the records anyway, your Honor?

By Mr. Barnett:

Q. Are Government Exhibits Nos. 100, 102 and 101

photostatic copies of the documents that you have described in your file?

A. They are.

Q. Now from examining the records, can you tell us the date that the sale occurred?

A. The sale occurred March 17, 1942.

Q. What was the selling price of the property?

A. The selling price was $145,000.

Q. What were the terms of the sale?

A. There was $5,000 paid down as earnest money at the time of the execution of this offer to purchase.

917 There was $30,000 paid at the time of delivery of the deed.

The balance was to be financed by a purchase money mortgage in the amount of $110,000.

918 Q. I hand you Government's Exhibit No. 97, a check, a photostatic copy of a check, in the amount of $5,000.00, to the order of the Prudential Insurance Company and ask you if that check bears the endorsement of the Prudential Insurance Company.

A. Yes, it does, of the Illinois branch office of the Prudential Insurance Company.

Q. I hand you Government's Exhibit No. 95, a cashier's check to the order of the Prudential Insurance Company, in the amount of $30,122.59 and ask you if that bears the endorsement of the Prudential Insurance Company.

A. It does.

Q. Now, you have stated that the property was sold subject to a mortgage?

A. That is correct.

Q. And was the mortgage held by the Prudential Insurance Company?

A. The Prudential Insurance Company held the purchase money on the property.

Q. Do you have a record of the payments on the mortgage?

A. Yes, sir, I do.

919 Q. Will you tell us what payments were made on the mortgage?

A. The mortgage was originally for $110,000.00.

On February 26, 1943, there was paid $5,000.00 on principal and $4400.00 on interest.

On March 1, 1944 there was paid five thousand on principal and forty-two hundred on interest.

On March 1, 1945 there was paid $5,000.00 on principal and $4,000.00 on interest.

On March 4, 1946, there was paid $5,000.00 on principal and $3,800.00 on interest.

On March 3, 1947, there was paid $5,000.00 on principal and $3,600.00 on interest.

On March 4, 1948, there was paid $2,000.00 on principal and $3,400.00 on interest.

On March 3, 1949, there was paid $2,000.00 on principal and $3,320.00 on interest.

On March 2, 1950, there was paid $2,000.00 on principal and $3,240.00 on interest.

On March 1, 1951, there was paid $2,000.00 on principal and $3,160.00 on interest.

On March 20, 1951 there was a credit of $77,000 on principal, which was the balance of the loan, plus $128.34 on interest.

920 Q. Who were the obligors on the mortgage to the Prudential Insurance Company?

A. The obligors were Paul DeLucia and Nancy DeLucia, his wife.

Q. I hand you Government Exhibit No. 86, which is a check to the order of the Prudential Company of America, in the amount of $9,400.00, dated February 25, 1943, and ask you if that bears the endorsement of the Prudential Insurance Company?

A. Yes, it does bear the customary endorsement of the Prudential Insurance Company.

Q. I hand you Government Exhibit No. 86-A and ask you if this is a true and correct photostatic copy of your record of payments made on the mortgage.

A. Yes, it is.

By Mr. Barnett: Your Honor, I will offer Government Exhibit No. 86, which was previously offered subject to connection, and Government Exhibit No. 86-A, the record of payments made on the mortgage, Government's
921 Exhibit No. 97, which was previously offered subject to connection, Government Exhibit 95, which I believe has been admitted, and I also offer Government Exhibit No. 100, 101 and 102.

By the Court: The same conditions, for the same reason. The same objection.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 86, 86-A, 97, 95, 100, 101 and 102.)

By Mr. Barnett: Your Honor, I am also offering at this time certified and exemplified copies of the deed of Prudential Insurance Company of America to Paul DeLucia and Nancy DeLucia and of the mortgage, wherein Paul DeLucia and Nancy DeLucia are obligors to the Prudential Insurance Company.

By the Court: The same ruling.

By Mr. Barnett: Do you have those exhibit numbers? They are 103 and 104.

922 (Said documents so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 103 and 104.)

By Mr. Barnett: No further questions, Mr. Gaynor.

By Mr. Stewart: No cross examination, Mr. Gaynor.

By Mr. Green: Motion to strike the entire testimony on behalf of the defendant Bulger.

By the Court: The same ruling.

By Mr. Barnett: Thank you, Mr. Gardner.

(Witness excused.)

. . . . . .

EDWARD J. MACK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Edward J. Mack, M-a-c-k-.

Q. Where do you live, Mr. Mack?

923 A. 6 Fulton Court, Poughkeepsie, New York.

Q. What is your occupation?

A. I am a practicing attorney.

Q. How long have you been a practicing attorney?

A. Oh, since 1935.

Q. Have you been associated with your father in the practice of law?

A. Yes, I have, since 1935.

Q. And is your father still living?

A. No, he is not.

Q. When did he pass away?

A. February 22nd of this year, at the age of 83.

Q. Did you bring with you, Mr. Mack, certain records of the office?

A. Yes, I did.

Q. Will you produce them, please?

By Mr. Barnett: Will you mark this book, please, Government Exhibit No. 140 for identification?

(Whereupon said document was marked Government Exhibit 140 for identification.)

924 By Mr. Barnett:

Q. Mr. Mack, you have before you a book which has been marked Government's Exhibit No. 140 for identification. Will you tell us what that book is?

A. That is an office ledger of John E. Mack, showing cash receipts and disbursements from the office account.

Q. Is that book under your custody and control?

A. Oh, yes.

Q. Do you recognize the handwriting in the book?

A. Yes. That is Leila Buckley.

Q. Who is Leila Buckley?

A. Presently she is my secretary. She has been with us for the past twenty-one years.

Q. Mr. Mack, will you turn to page 108.

A. 108?

Q. 108.

A. Yes.

Q. Do you find an entry there with reference to Joseph I. Bulger?

A. That is correct.

925 Q. What does the entry state?

A. It shows on February 12, 1944 there was a payment to Judge Mack of $15,000.00.

Q. Judge Mack is your father?

A. That is my father, yes. He was a former Supreme Court Judge in New York State.

Q. Is he a practicing lawyer at this time?

A. What is that, sir?

Q. Is he a practicing lawyer at this time?

A. In 1944, yes, sir.

Q. Now will you turn to page 104 of your ledger.

A. Yes.

Q. Do you find an entry there?

A. I do. On January 27, 1944 there is a payment to Judge Mack of $10,000.00.

Q. Is there anything else recorded there as to what it is for?

A. It says "On account of U. S. against —" it looks like "Nitto."

Q. N-i-t-t-o?

A. N-i-t-t-o.

Q. Is that same entry true with respect to the record on page 108?

A. "Balance of retainer fee, U. S. against Nitto."

926 Q. So that is a total of $25,000.00?

A. That is correct.

By Mr. Barnett: I will ask the Reporter to mark this document as Government's Exhibit 139 for identification.

(Thereupon said document was marked Government's Exhibit 139 for identification.)

927 By Mr. Barnett:

Q. I hand you, Mr. Mack, Government Exhibit No. 139 for identification, and ask you if that document is part of the files of your office.

A. Yes, it is.

Q. Over which you have custody and control?

A. Yes.

Q. Does it pertain to this transaction that you have just told us about?

A. With regard to the retainer fee?

Q. Yes.

A. That and something else, yes.

By Mr. Barnett: All right.

Your Honor, I will offer in evidence at this time Government Exhibit No. 139 and Exhibit No. 140. That is to say, I will offer the two pages of the ledger of Government Exhibit No. 140.

By Mr. Stewart: Why couldn't the testimony stand without the book, and let the gentleman take his book?

He has told us probably all that is pertinent there.

928 By the Court: If that is agreeable with the Government.

By Mr. Barnett: We will not keep the book, your Honor. We will let him take it back with him.

By the Court: All right.

By Mr. Stewart: That is all we have to say.

By Mr. Barnett: Mr. Green has the book.

By Mr. Green: No objection, your Honor, except the standing objection as to the relevancy of this to this case.

By the Court: Your objection to this one isn't the same now?

By Mr. Green: It is, your Honor.

By the Court: I will reserve my ruling. It may be received subject to the general objection.

By Mr. Green: Yes.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 139 and 140.)

929 By Mr. Barnett: Could I have Exhibit 139?

By the Court: I understand these payments were made by Bulger? Is that what the witness testified to?

By Mr. Green: The witness, I believe, your Honor, testified that the payment on February 12, 1945 shows "made by J. I. Bulger," and the payment of January 27 shows the "account of United States vs. Nitto."

By the Court: Yes.

By Mr. Green: The evidence in the case showed that the U. S. vs. Nitto case was the extortion case in New York, about which there has been previous testimony, and in which Mr. Bulger took some part in the trial in New York.

The evidence —

By the Court: All right, I will reserve my ruling.

By Mr. Barnett: There is still another exhibit over there that they are looking at.

930 By the Court: There is no objection, they said, to these exhibits except the general objection originally made.

By Mr. Green: Yes.

931 By Mr. Stewart: I am going to move to strike it later unless he connects it up. Of course, he might know that.

By the Court: Yes, of course.

By Mr. Barnett:

Q. Mr. Mack, I hand you photostatic copies of two deposit tickets, and ask you if you recognize the handwriting on the deposit tickets.

A. Yes, I do.

Q. The deposit tickets which I have handed you are both marked Government's Exhibit 141, so I have stapled them together in one exhibit.

Do you recognize the handwriting on those deposit tickets?

A. Yes, I do.

Q. Whose handwriting is it?

A. Leila R. Buckley.

Q. In what bank?

A. That is our bank, the Forkhill National Bank and Trust Company in Poughkeepsie.

Q. Do those deposit tickets refer to the entries in your cash ledger?

A. Yes, they do. They correspond with each date in the book.

932 By Mr. Barnett: Your Honor, I also offer deposit tickets, Government's Exhibit No. 141.

By the Witness: There is additional moneys also deposited on one of those dates. I think $300.00 from some other client.

By the Court: Same ruling.

By Mr. Stewart: Same ruling, your Honor.

By the Court: All right.

(Said document, so offered and received in evidence, was marked Government's Exhibit 141.)

By Mr. Barnett: Your Honor, because of the fact I believe Mr. Green made a mistake in his statement as to what this book recorded, I would like to read these entries again.

On page 104 of Government's Exhibit No. 140 appears the entry "January 27, 1944, Joseph I. Bulger, on account" —and the word account is abbreviated—"on account
933 U. S. vs. Nitto, net cash $10,000.00. Clients, $10,000.00."

Those were the two entries. That is to say, there are two columns in there each recording $10,000.00.

On page 108 of Government's Exhibit 140 —

By the Witness: The 12th.

By Mr. Barnett: On the 12th of February, 1944, appears the entry, "Joseph I. Bulger, balance —" and the word balance is abbreviated — "balance of retainer fee — U. S. vs. Nitto. Net cash $15,000.00. Clients, $15,000.00."

By the Court: That is what I said when I made my statement to counsel. That is what I had in mind that it changes your motion a little, but we will reserve ruling and I will hear you on it.

By Mr. Barnett: Your Honor, if I may, I would like to read Government's Exhibit No. 139, which is a carbon copy of a letter.

By Mr. Barnett:

Q. Is Exhibit 139 a carbon copy of a letter written by your office, Mr. Mack?

A. Yes, it is.

934 dated January 27, 1944, addressed to Joseph I. Bulger, Esq., 139 North Clark Street, Chicago, Illinois.

In longhand is written the words, "U. S. v. Campagna," C-a-m-p-a-g-n-a.

"Dear Mr. Bulger:

"I hereby acknowledge receipt of four checks of the Manufacturer's Trust Company, amounting to $5,000, payable to your order and endorsed to me, and also $5,000 in cash, as a payment on my retainer of $25,000 for work on appeal to the United States Circuit Court of Appeals (Second Department). My retainer to be $25,000 and the balance of $15,000 is to be paid on or before February 10th.

"The balance of my fee, $25,000, is to be paid upon the final completion of the brief for argument on appeal.

935 "The $50,000 herein arranged for is to cover all my work, including the argument on appeal and a motion for bail on appeal, if that is finally determined to be advisable. The work on the preparation of the appeal and the papers on the motion for bail and also the rough work on the brief are to be supplied by you.

"It is understood and agreed that if the conviction should be affirmed or if it should be reversed and the case is taken and reviewed by the United States Supreme Court I shall be glad to continue the argument of the same and preparation of the same, and the agreement for compensation thereof shall be taken up and fixed when the occasion itself arises.

"Very truly yours,"

By Mr. Barnett:

Q. Mr. Mack, did your firm receive any funds
936 in addition to the $25,000 that you have testified to here?

A. They did not.

Q. And do you know who the defendants in this action were?

A. Who the defendants were?

Q. Yes.

A. Well, the only thing I know is what is in the file because I wasn't familiar with this at all. Louis Campagna, Paul DeLucia, Phil. D'Andrea, Francis Maritote, Charles Gioe, and John Rosselli.

Q. You are reading from a copy of the brief in the file?

A. I am reading from the motion for bail.

By Mr. Barnett: May I have a second, your Honor?

There are no further questions of Mr. Mack.

By Mr. Stewart: No cross examination.

By Mr. Green: The same motion.

By the Court: The same ruling.

By the Witness: May I have all my papers?

By Mr. Stewart: Take them all with you.

937 By the Witness: Take them all back? All right.

(Witness excused.)

By Mr. Barnett: Your Honor, we will substitute a photostatic copy for the letter and return the letter.

We have a photostatic copy.

DANIEL V. DUFF, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Daniel V. Duff.

Q. Where do you live, Mr. Duff?

A. Garden City, Long Island, New York.

Q. What is your occupation?

A. Life Insurance, the Equitable Life Insurance Company, assistant manager.

938 Q. And in your capacity as assistant manager of the Equitable Life Insurance Company, have you produced certain records for us today?

A. Yes, sir.

Q. Do you have custody and control of those records?

A. Yes, sir.

Q. And are they records that are kept in the ordinary course of your business?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 132, which are photostatic copies of certain documents, and ask you if they are photostatic copies of documents in your file.

A. They are.

Q. Will you tell us what those documents are?

A. This is an application for a retirement annuity on the life of Marie A. DeLucia, made by Paul DeLucia on April 17, 1936, for a single consideration of $20,000.00 to be issued in twenty contracts of one unit each, that is, a thousand dollars a policy.

Q. Can you tell from your records whether that premium payment was made?

939 A. Yes, it was made.

Q. And is that policy still in force?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 133 and ask you if you can identify that.

A. This is an application for a similar type of retirement annuity contract on the life of Anthony P. DeLucia, an application made by Paul DeLucia on April 17, 1936. The consideration is the same, $20,000.00, but this was issued in three individual contracts rather than twenty, as in the previous case.

Q. Do your records reflect whether that premium payment was made?

A. Yes, it was made.

Q. Is the policy still in force?

A. Yes, sir.

Q. Now, I hand you Government's Exhibit No. 134 and ask you if you can identify those papers.

A. This is an application made by Paul DeLucia for an annual premium annuity on his own life. It differs from the other two in that premiums are payable annually rather than a single sum, $2,000.00 a year, twenty units of retirement annuity.

940 Q. I hand you Government's Exhibit No. 134-A and ask you if you can identify that document.

A. That is a photostat of what we call a history card record policy of the retirement annuity contract.

Q. Does that refer to the policy on the life of Paul DeLucia?

A. Yes, it does.

Q. Can you tell us when that policy was put in force?

A. Well, the contract commenced in 1938 and five annual premiums were paid of $2,000.00 each. No payment was made after the 1942 payment.

In 1943, the policy went through what we call a paid up status and was continued thereafter without further premium payments, to May of 1954, when it was surrendered and we paid its cash value to the annuant, in the sum of $12,179.95.

941 Q. What is the annual premium date of the policy?

A. I beg your pardon?

Q. What is the annual premium date of the policy?

A. The annual premium date?

Q. The date of the premium.

A. December 28, 1938 and each year thereafter.

Q. You made reference to an automatic—I don't know what you called it.

A. The paid up option.

Q. The paid up option?

A. Yes.

Q. What is the clause in the policy that calls for that?

A. Well, the policy provides that if premiums are discontinued and no other action is taken, then the equity established in the annuity will be used to provide a reduced annuity at the same retirement age and that annuity will continue at 3 per cent per annum, compound interest.

Q. And your records disclose that no premium payment was made for the premium due on December 28, 1943, is that correct?

A. That is right.

942 Q. Now, with reference to the policy on Marie DeLucia, what is the date on which the premium was paid?

A. The first premium is due in April of 1936.

Q. That is a single premium policy?

A. That is right. The single premium is due in April 1936.

Q. And it was paid on that date or paid in that month?

A. Yes.

Q. What about the policy on the life of Anthony DeLucia?

A. That is the same, April of 1936, a single premium, for $20,000, for the three policies.

Q. That was also paid in that month?

A. Yes.

By Mr. Barnett: Your Honor, we will offer Government Exhibits Nos. 132, 133, 134 and 134-A.

I take it there is no objection?

By Mr. Green: The same general objection.

By the Court: The same ruling.

943 (Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 132, 133, 134 and 134-A.)

By Mr. Barnett: Your Honor, I would like to read from only one of these documents and that is Government Exhibit 133—pardon me. I mean Exhibit 134.

"Application is hereby made for retirement annuity of twenty units on the life of Paul DeLucia, whose occupation is World Playhouse, who resides at 5300 West Jackson Boulevard, Chicago, Illinois, whose place of business is 410 South Michigan Avenue, Chicago, Illinois."

The document is dated, "Chicago, Illinois, December 17, 1938" and is signed, "Paul DeLucia."

No further questions of this witness, your Honor.

By Mr. Stewart: No cross examination.

944 • • •

945 • • • HUGH M. G. GARDEN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

• • •

946-960 • • •

961 • • • A. Well, about the first thing he said to me after "How do you do?" was that receivership was a good thing, it cleaned it all up, and that is all we ever talked about the World's Fair.

Q. Then what happened?

A. Then we went on with the house job.

Q. Tell us about that.

962 A. Well, he had bought a house there, on a lovely piece of land with trees and rolling landscape, and

he wanted to add a round dining room, circular, 30 feet in diameter.

These figures are Mr. DeLucia's. He had an architectural sense. He knew what he was doing.

So I designed it that way. What you see out there is my design. It goes way beyond what Paul had in mind, but he was correct in his instructions to me. They were lucid and clear, and when I thought he was perhaps a little too large, I made it 30 feet on the outside and I told him that, and he said, "Oh, no, no, 30 feet inside."

That is really unusual.

963 Q. What was the interior construction of the dining room?

A. Why, it was a frame building, the same as the house was.

Q. I say the interior.

A. What?

Q. The interior.

A. The interior was plaster.

Q. Of the dining room?

A. Plaster and wood. It was a decorative, handsome room where he could feed about fifty friends at once.

Q. You made plans for this, is that correct?

A. Oh, yes. You have them.

Q. Is Government's Exhibit No. 110 the plans which you drew for that addition to the house?

A. Yes, that is it, and there is the date on it and everything for you.

Q. What is the date, Mr. Garden?

A. September 23, 1937.

Q. And the name on the plans is?

A. Addition to residence of Mr. Paul Salvi.

Q. Now did you proceed after the initial drawing

964 of those plans with the construction of the dining room?

A. Oh, yes, the whole thing, the pool, swimming pool.

Q. First of all, you proceeded with the construction of the dining room?

A. The dining room and the additions to the house as one thing, the basement—

Q. Do you recall approximately the total cost of the dining room?

A. No, not separately. It was a unit.

Q. Does the figure of $30,000.00 refresh your recollection?

A. Yes, it was about $30,000.00.

Q. That was for the dining room and the additions to the house?

A. Yes. You see, there was a basement with a kitchen down there and refrigeration and everything, staircase up into the serving pantry on the main floor.

Q. During the course of the construction on the dining room, did you have any further discussions with Mr. DeLucia, then known to you as Mr. Salvi, concerning any other addition to the property?

A. Why, yes, the pool, the swimming pool.

965 Q. What was your discussion with him about that?

A. Well, there was a hollow in the ground which was an obvious place for a swimming pool, lovely piece of ground, and we talked together, just as you would if you were talking about a building, even if you weren't personally interested in it.

I advanced ideas and he advanced ideas, and we incorporated them into a beautiful swimming pool. Then we made an extension of the swimming pool of shallower depth where the children could wade and play, and that was a part of the same design.

We also put a little pavilion there for the ladies to sit in case the children needed attention, needed to be pulled out of the water or something.

Then we had to provide the water supply and drainage, and we built the whole thing, and we did it in native stone which we got from Wisconsin. It was concrete in the parts that held the water, but everything that was up above the water was architectural and under landscape ideas.

966 It was native stone laid in flat form, and it was not uncomfortable to run on with bare feet.

Then as we got the structure of the pool about done, Mr. DeLucia said that he wanted to have the water filtered. That was a blow because you have to drain it from the lowest point and when you smash a hole in the concrete floor with water pressure on it, you may or you may not get a water-tight job, which we did.

Then we put the tanks and pumps close to the pool but underground, and buried them and planted shrubs and things where you don't see them. The whole thing is naturalistic and artistically a very good job, as well as structurally.

967 Q. Do you recall approximately the additional cost of constructing a pool and the filtration system?

A. I don't recall the figures, but it was a substantial amount. I would guess $18,000 or $20,000.

Q. I hand you Government Exhibit No. 117, and ask you if this is a true and correct photograph of the cupola, the dining room and swimming pool that you built?

A. Yes. Here is the pool. There is the place where the ladies sit. There is the top of the dining room and the house is over beyond a lot of landscaping.

Q. Mr. Garden, while you were working on the construction of the dining room and the construction of the swimming pool, were you making payments to contractors?

A. No—oh, yes. Yes, we were writing certificates when they were necessary, where they applied, rather, and we

found the man to build or to do this stonework which
968 was an artistic job. We imported the stone from Wisconsin, lannon stone, and in order to get that we went up to Lannon and saw the stone in the ground and said, "That is what we want," and had it shipped down, trucked to the site, and then built by the man who found and who was paid for his services.

Q. How did you handle the payments to the suppliers and the contractors for the work?

A. I imagine it was done in the same way, the certificate saying that they were entitled to this sum of money, and then he handed them to money or else he handled it through our office.

We had no interest in the money, only our fees.

Q. Do you remember the percentage of your fee in this job?

A. It wasn't less than 10 per cent. It was worth that, and some more.

Q. Did you have any dealings with Mrs. DeLucia during this transaction?

A. I met her constantly.

Q. But your dealings were with Mr. DeLucia?

A. Oh, yes, thoroughly harmonious, always. Mrs.
969 DeLucia as well as Paul.

Q. Now while this work was under progress, did you receive a commission, that is to say, did you receive authorization to do some additional work for Mr. DeLucia?

A. We finished that job up, but he kept talking to me about him wanting a house in the city. Later he did the same thing about a farm. He wanted a farm.

On all of those I helped him.

Q. With reference to the house in the city, what occurred?

A. Well, he said he wanted to get a place, and he kept looking around for something he could buy. He liked that way of doing it.

He would call me and ask if I could come out and send a car for me and look at a house.

The first one that I recall was in Austin, or Oak Park—I think it was Austin. I looked at it, and I said, "Paul, that is no good." It was a great big house, surrounded by little ones, and it was very badly built and in bad condition. . . . . .

I said, "You would never get your money out if
970 you sold it again."

So that was the end of that one.

971 There were one or two others, but at least, we landed—he asked me where he should be. And, I said, "Go where the rest of the Oak Park people did; go to River Forest."

So, he began to look at River Forest and presently he called me and said he found a place he wanted me to see.

So, I went out and looked the place over.

You don't just look at the house; you look at the site, everything.

"Well," I said, "this is a good house. This is well built, and you can add what you want to it and build the garage and make a fine place of it, but, it has one fault."

He said, "What is that?"

I said, "It is too near the lot line." The side lot line was only about ten feet away. I said, "You need more land."

So, he said, "Oh, well, those people won't listen to reason."

"Well," I said, "it doesn't help you at all. If they build as close to the lot line as you are, the two houses will
972 be twenty feet apart and this isn't that kind of a house."

So, the next time I saw him, he said, "I got more land."

Q. And this was the property located where?

A. What is that again?

Q. Lathrop Avenue in River Forest?

A. Lathrop Avenue, 812, isn't it, something like that?

Q. Yes.

A. Lathrop Avenue.

Q. As a result of that, did you draw up some plans?

A. Yes.

Q. For the house?

A. Drew them up and built it, or, supervised it from the start to finish.

Q. I didn't hear what you said, Mr. Garden.

A. I supervised it. I personally did a great deal of the supervision.

Q. And who were the contractors on the job?

A. I think it was Brundage, wasn't it?

Q. Avery Brundage?

A. I think so.

Q. And is Government's Exhibit 109 the original 973 tracings prepared in your office for the remodeling of that job?

A. Yes. You don't handle your plans carefully. It is pretty near illegible. This is "Paul DeLucia." Alterations—that is the plan. That is the plan.

Here was the original house (indicating). This is my addition (indicating), plus the garage.

Q. Now, those plans have the name "Paul DeLucia" on them?

A. Yes.

Q. By this time—

A. He told me what his name was. He says, "My real name is DeLucia."

Q. That is what he told you by the time you drew these plans?

A. Yes.

974 Q. After the completion of the work on the River Forest house, Mr. Garden, did you have any further contacts with Mr. DeLucia?

A. Yes. These jobs had an interval of time between them, you see. It wasn't a continuous thing.

He wanted a farm; one day he called me and asked if I could go out with him to look at a farm which he had bought. That was a farm, in Kendall County is it?

Q. Kendall County, Illinois?

A. I think so. It is a long way from where I live.

He had bought it with the intention of having a real farm. It was a beautiful bit of land, about a mile square.

And, the first thing, there was a little old farmhouse there and we had to put a little plumbing in that and piece it together so that we could sleep overnight, and he had already started some barns, a machine barn.

And then, there was to be a residence. We took a hand in it all, the mechanical stuff, as well as the exteriors of the building.

975 But, I quit on it, because I told him, "It is too far from where I live." I said, "It takes me all day just to go out and come back."

And, our office is a big one and we have big work and we can't take this sort of work.

Q. Well, when was this that you quit, Mr. Garden?

A. Well, I haven't got any plans of it here. Have we any plans here?

Q. I say, when did you quit? What year was it?

A. If I was in the office, then maybe I could tell you.

Q. Was it before or after World War II?

A. Oh, I think it was, yes.

Q. Which, before or after?

A. Oh, I think it was after.

Q. Did you do some work on the farm?

A. Oh, yes.

Q. Well, what was the nature of the work that you did do on the farm?

A. Well, we had to decide where the cattle would be fed, and arrange the hay barns, and the grain, so that it could be hauled in by machinery and brought over
976 and dumped down into there—what do they call it—mangers?

Q. Well, did you do that?

A. Well, there was water that was provided for. There was a little stream that flowed through there. We improved it all.

We built more barns for the machines. He had them pretty well along.

Before we got to the house, I made a sketch for the house. It is difficult to explain to you, but a house takes place slowly as the owner expresses something that he wants.

And, you think of something, and ask, "Do you think it ought to have it?" And, so it went.

Well, we only got a little way on that, I having almost no instruction from him.

I decided on a location for the house across from the road from where the other stuff was. It was a beautiful place and I made a sketch for it which you, I think, have.

The first time I took it to him, he said, "Oh, I can't have a house as big as that." So, that was the end of that.
977 It was about that time that I told him that I was going to quit because it was too difficult for me to come out there and I was getting too old.

978 Q. Is this sketch which has been marked Government's Exhibit 112 the sketch of the house that you just referred to?

A. I can tell you right now it is, and a good looking house it is, too. Yes, that is the one.

Q. Does that refresh your recollection as to the date that you discontinued your association?

A. Oh, yes. It was just about that time.

Q. And that time was when?

A. That is it.

Q. September of 1947?

A. I haven't looked for that. Is there a date on there?

Q. Yes.

A. You have seen more of it than I have. It isn't on here. It is on these (indicating).

Q. Do you see it now? No, not there; right here (indicating).

A. I can't read it.

Q. "9/2/47"?

A. Oh, yes, that is right, 9/2/47.

979-982 • • •

983 H. GAYLEN FREY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

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984 • • •

985 • • • Q. How much was the cost of that furnace and stoker?

986 A. About $1,200—$1,180 net without the interest.

Q. Without the interest?

A. Yes, net without the interest.

987 Q. $1,180, net, without interest?

A. That is right, yes, sir.

Q. That is before financing, is that right?

A. That is right, yes, sir.

Q. Do you know what it is with interest?

A. I can tell you—$1,356.76.

Q. That is the total cost?

A. That is right, yes, sir.

Q. Now that took place in 1935, did it?

A. I believe 1935, yes, sir.

Q. Does that record help you refresh your recollection any?

A. Yes. This is dated September 11, 1935. The application was made prior to that, probably about the 1st of September.

Q. Now thereafter did you furnish any fuel supplies to Mr. DeLucia at his house in Long Beach?

A. Yes. We furnished coal for this same stoker in the same house for a number of years after that.

Q. Did you keep a record of the charges that you made or the payments made to you by Mr. DeLucia?

A. Yes, we did.

988 Q. Is Government Exhibit No. 122 your record of those payments?

A. I believe this ledger card is for oil delivered to the new house, which was built later, the following year.

But we also did sell him coal for the original house.

Q. Do you have a record of the coal sales which you made?

A. No, we don't have. It is not available, no.

Q. You no longer have such a record available?

A. That is right.

Q. Now in addition to the installation of the furnace, did you perform any other work for Mr. DeLucia?

A. Well, not in the way of labor, but we did sell him other materials.

Q. When was the next time that you had occasion to sell him materials?

A. The following year during the summer of 1956.

Q. What was the nature of the materials that you sold to him?

A. That was building material, cement blocks,
989 roofing, nails, hardware, windows, doors, and so forth.

Q. For what purpose?

A. For building a guest house on the same property in Long Beach.

Q. Who was the contractor that built the guest house?

A. I believe Leonard Johnson had that job.

Q. And you furnished supplies for the job?

A. Yes, that is right.

Q. Do you recall the amount of money that you received for the supplies that you furnished for that house?

A. That was approximately $7,000.

Q. Over how long a period of time was the delivery of the materials spread?

A. Oh, possibly four to five months.

Q. How did you receive payment for the material?

A. In cash.

Q. From whom?

A. From Mr. DeLucia.

Q. Did you receive it all at once?

A. No, it was paid as the job progressed.

990 Q. And paid in currency?

A. That is right, yes, sir.

991 Q. Do you recall anything concerning the donomination of the bills?

A. Well, they were usually fairly large size, especially to me during the depression, at least.

Q. The total amount of that job to your best recollection is about $7,000.00?

A. Yes, sir, that is right.

Q. Do you have any records concerning the sale of that material to Mr. DeLucia?

A. No, we don't at the present time.

Q. Did you have any further dealings with Mr. De Lucia?

A. Yes, I think the following year, in 1937, we furnished a good share of the material for a game room which was built attached to the original residence.

Q. Do you know who the architect on that job was?

A. No, I can't say. Someone, a firm in Chicago, but I don't know the firm name.

Q. Can you describe this room to us?

A. It was a circular room, circular walls and circular roof, and a very outstanding room.

992 Q. Can you recall the dimensions of the room?

A. Well, I would say probably about 50 feet in diameter, 40 to 50 feet in diameter.

Q. I show you Government's Exhibit No. 117, which is a photograph of the Long Beach property, and ask if you can identify the room which you are referring to on that photograph?

A. Yes, right here.

Q. Is that a portion of the house that has a circular cupola on top?

A. That is right, yes, sir, attached to it by sort of a hallway.

Q. And that is what you referred to as the game room?

A. Yes, sir.

Q. What material did you fur sh for the game room?

A. Well, lumber and cement. I don't believe we furnished the windows, but I think we furnished the roofing and a good share of the material that went into this room.

Q. Do you recall approximately how much the value was of the material furnished?

A. Yes. That ran approximately $6,000.00.

993 Q. Who paid you for that material?

A. Mr. DeLucia.

Q. How did he pay you for it?

A. That was also paid in cash.

Q. Was it paid over a period of time as you requested payment?

A. That is right, yes.

Q. And this took place during the year 1937, did it?

A. That is right, yes, sir.

Q. And the guest house took place during the year 1936?

A. That is right.

Q. Now subsequent to the year 1937, did you have any dealings with Mr. DeLucia?

A. Yes. I believe it was the following year that we furnished most of the materials to build a master bedroom on the second story on the lake side of the original residence again.

Q. On the lake side of the original residence?

A. That is right, yes, sir.

Q. That would be Lake Michigan?

A. That is right, yes, sir.

Q. Is that portion identifiable in this photo-
994 graph?

A. Well, it would be on the far side of the house, a little hard to see from here. It would be on this far side from here.

Q. It is not visible in this photograph?

A. That is right.

995 Q. That addition to the house, did you put in a dormer?

A. We raised the roof, put in a dormer, and made the walls higher. After that we put a new roof on the whole house, or possibly along with that job, following that job, we put a new roof on the whole house.

Q. How much did you charge for the work done in connection with the bedroom?

A. About $1,500.

Q. And the roof?

A. The roof, that was about $600.

Q. This you say took place during the year 1938?

A. That is right, yes.

Q. Did you receive payment for this work in that year as the work progressed?

A. I would say, yes.

Q. And from Mr. DeLucia?

A. Yes, that is right.

Q. Likewise in currency?

A. Yes, that is right.

Q. Now you say you also furnished coal to Mr. DeLucia.

996 Did you furnish any other incidental material that you haven't described for us?

A. Yes. Aside from the coal for the house, the residence, and oil for the guest house, of course, there was quite a lot of various materials like paint, hardware and the repair parts we furnished him over a period of years.

Q. Over what?

A. Over a period of years.

Q. Do you know approximately the total amount of business that your firm did with Mr. DeLucia?

A. Well, it would be about $20,000, approximately.

Q. Over all?

A. Yes, that is right.

Q. Did you know Mr. DeLucia as Mr. Paul Salvi when you started doing business with him?

A. Originally, yes, sir.

Q. Did you subsequently have a conversation with him or how did you know him as Mr. Paul DeLucia?

A. Well, we received word at the office, I believe, that we were to change our records to read "Paul DeLucia" rather than "Paul Salvi" as of a certain date.

997 Q. When was that—between 1935 and 1938?

A. Well, yes, I would say so, somewhere in that neighborhood.

Q. Do you see Mr. DeLucia in the court room?

A. Yes, sir.

Q. Do you recognize him?

. . . . . .

A. I do.

By Mr. Barnett: Your Honor, I offer in evidence Government Exhibits Nos. 118, 120 and 122.

By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 118, 120 and 122.)

By Mr. Barnett: I have no further questions of Mr. Frey, but I would like to read one of these documents while he is on the stand.

By Mr. Stewart: No cross.

. . .

998-999 . . .

1000 LEONARD JOHNSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Leonard Johnson.

Q. Where do you live, Mr. Johnson?

A. Beverly Shores.

Q. What state is that in?

A. Beverly Shores, it is on this side of Michigan City.

Q. Is it in Indiana? Beverly Shores, Indiana?

A. Yes.

Q. That is near Michigan City?

A. Yes.

Q. What is your occupation?
A. Concrete and brick work.
Q. Are you self-employed?
A. Yes.
Q. You are a concrete and brick work contractor?
A. Yes.
Q. How long have you been so employed?
1001 A. Since about 1930.
Q. Since about 1930?
A. Yes.
Q. During the year 1934 and/or 1935, did you do any work at Long Beach, Indiana, for Mr. Paul DeLucia?
A. Yes.
Q. What was that work?
A. Mostly concrete. One fireplace later.
Q. One what?
A. It was mostly concrete work. There was also one fireplace of brick work.
Q. During 1935?
A. No, this was in 1936, the brick work.
Q. In 1936 what was the work that you did?
A. Well, it was, we did some in three or four different years there, 1934, 1935 and 1936.
Q. Do you have a recollection as to work done on a swimming pool?
A. I made an affidavit, if I may use it, so I could keep that straight. Could I read it?
Q. You mean you want to refresh your recollection?
A. Would you want me to give the dates and the
1002 amount?
Q. Yes, the dates and the amount of the work you did.
A. 1934 to 1935, I repaired and made house wall and patio, and then in 1935 I put a cement slab in front of the caretaker's house.

Q. How much did you receive for all of that work?

A. $970.00 for the two jobs.

Q. When was that paid?

A. Sir?

Q. When was it paid to you? Was it paid to you in 1935?

A. 1934 and 1935.

Q. Who paid it to you?

A. Mr. Salvi or DeLucia.

Q. Do you know him by sight? Do you know Mr. Salvi or Mr. DeLucia by sight?

A. Yes, I do.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Did he pay it to you in cash or by check?

A. By cash.

Q. Now will you tell us what work you did in 1003 1936?

A. I did the caretaker's house. That was a concrete slab, the carpenter work and chimney. That was about $3400.00.

Then I put a retaining wall along the hill and side walks. That was a little over $600.00.

Then I built a swimming pool for around $550.00, which made 1936 about $4,585.00.

Q. Where did you build the swimming pool?

A. At a man's house by the name of Pacelli.

Q. And you received payment for that from Mr. DeLucia?

A. Yes.

Q. Is Mr. Pacelli's house near Mr. DeLucia's house?

A. No. One was on 30 and this was on about 21, or 22.

Q. Was it in Long Beach, Indiana?

A. Yes.

Q. So in 1936 what is the total sum of money that you received from Mr. DeLucia?

A. $4,585.00.

Q. Was that paid to you in cash or by check?

1004 A. By cash.

Q. And by Mr. DeLucia? It was paid by Mr. DeLucia, right?

A. Yes.

Q. Did you do some work for him in 1937?

A. Yes. I built the circle in that—I don't know what you call that house. Some say game room and—it was a circular foundation.

Q. I hand you Government's Exhibit No. 117, a photograph, and ask you if the room that you are referring to appears on it?

A. Up here.

Q. That is the room with the circular cupola over the top?

A. Yes.

Q. Did you do something in connection with that room?

A. Yes.

Q. What was it?

A. There was about $900.00 in that for the foundation, and they had a room leading to it. Then there was other labor and material around $400.00 later.

Q. All in 1937?

1005 A. Yes. That made about $1300.00.

Q. Who paid you for that work?

A. Mr. DeLucia.

Q. Was it by check or by currency?

A. By cash.

Q. That swimming pool that you referred to in Mr. Pacelli's house, was that a swimming pool or a flower pool?

A. It was more of a flower—it was a series of falls and the pool, and some man got some special stone from Wisconsin that we laid around it and made falls of it.

Q. It wasn't truly a swimming pool? It was decorative?

A. No, it wasn't a swimming pool.

By Mr. Barnett: No further questions of Mr. Johnson.

By Mr. Stewart: No cross.

By Mr. Green: Same motion, your Honor?

By the Court: Same ruling.

(Witness excused.)

1006-1030 * * *

1031 * * * (Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 124, 125, 126, 127 and 128.)

By Mr. Barnett: I have no further questions of Mr. Kishner your Honor.

By Mr. Green: No questions.

By Mr. Barnett. You may step down.

(Witness excused.)

By Mr. Barnett: Your Honor, at the close of yesterday's session, I advised the Court that I had some files of the District Court Clerk's office here which I wish to offer.

Mr. Stewart said he would have no objection to my failure to bring the Clerk, and I would like to offer
1032 those files at this time.

These documents which I am offering are part of the Italian Village bankruptcy file, which is File No. 57216 of the United States District Court Clerk's office of the Northern District of Illinois.

The exhibits which I am offering have been numbered Government Exhibit 130, consisting of Schedules A and B in bankruptcy in the Italian Village;

Exhibit No. 131-B, consisting of the trustee's supplemental final report and account.

Exhibit No. 131-A, consisting of the trustee's final report and account.

I am not offering the balance of the file, your Honor, but just these three documents from the file.

By the Court: They may be received under the same conditions that the other documents were received.

1033 (Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 130, 131-A and 131-B.)

By Mr. Barnett: There are a few matters I would like to read to the jury from these exhibits.

Government Exhibit No. 124, the longhand digest of the corporate records of the Italian Village by Mr. Kishner, reads as follows:

"Italian Village, Central Subscription Agent;

"Aurelio Pagano, 600 Blue Island Avenue, one share, $100.

"Joseph Imburgio, 1103 Broadway, Melrose Park, Illinois. 15 shares, $1,500.

"Elliodor M. Libonati, 100 North LaSalle Street, 14 shares, $1,400.

"William V. Pacelli, 767 West Taylor, 10 shares, $1,000.

1034 Daniel Serritella, 2127 South Prairie, 10 shares, $1,000.00.

Total, $5,000.00.

Incorporated February 13, 1934.

Incorporators are Aurelio Pagano, Joseph Imburgio, Elliodor M. Libonati. Registered Agent, Thomas F. White, Jr., 111 West Washington Street.

Page 2, authorized capitalization, 200 shares common, $100.00 par value, $20,000.00.

Issued stock, 50 shares common, $5,000.00.

Value of property to be owned, $20,000.00.

Stockholders, William V. Pacelli, Joseph Imburgio, E. M. Libonati.

Officers, Joseph Imburgio, president, Dan Serritella, vice president, E. M. Libonati, secretary, William V. Pacelli, Treasurer.

Stock subscribed, paid in cash, $5,000.00.

1035 From Government's Exhibit No. 130, Schedule A and B in bankruptcy, the last page shows the summary of debts and assets.

The total of Schedule A, which is the debts, is $169-265.30, and the total of Schedule B, the assets, is $40,-420.61.

This document, Exhibit 130, the Schedule A and B, was filed in the United States District Court on November 2, 1934.

Government's Exhibit No. 131-A, the trustee's final report filed on September 3, 1935, I just want to read the summary figures, your Honor, if I can find them.

I want to correct a statement that I made in reading from Government's Exhibit No. 124. As to corporate records, I read "Joseph Imburgio, 158 shares, $1500.00." It should be "Joseph Imburgio, 15 shares, $1500.00."

Government's Exhibit No. 131-A, the trustee's
1036 final report in bankruptcy shows a recapitulation as follows:

Total receipts, $35,826.82. Total disbursements, $19,-102.71.

Balance on hand, $16,724.11.

1037 Exhibit No. 131-B, the trustee's supplemental final report, filed April 7, 1936, shows a recapitulation as follows:

Total receipts, $35,826.82.

Total disbursements, $35,826.82.

Balance on hand: None, as of the date of the report which is subscribed and sworn to on the 27th day of April, A.D. 1936, by Edwin D. Buell, trustee.

Mr. Anorino, please.

JAMES ANORINO, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Ma'am?

Q. Tell us your full name, please.

A. My full name is James Anorino.

By the Court: Speak louder so they can all hear you back there.

1038 By the Witness: Do you want me to repeat that?

By Mr. Barnett:

Q. Yes. Speak louder, please.

A. James Anorino, A-n-o-r-i-n-o.

Q. Is the spelling of your name A-n-o-r-i-n-o?

A. That is right.

Q. Where do you live, Mr. Anorino?

A. I live at 1314 South 17th Avenue, Maywood, Illinois.

Q. In Maywood, Illinois?

A. That's right.

Q. What is your occupation?

A. Ma'am? Occupation?

Q. What is your occupation?

A. Laborer.

Q. Pardon me?

A. Laborer.

Q. Do you know Paul DeLucia?
A. Yes, sir, I do.
Q. Have you ever been employed by him?
A. That is right.
Q. What work did you do for Paul DeLucia?
1039 A. Helping around the house, landscaping.
Q. You did landscaping?
A. That is right.
Q. Around what house?
A. At Long Beach, Indiana.
Q. And how long did you work for him?
A. I started working for Mr. DeLucia in 1935, April 1st.
Q. April 1, 1935?
A. That's right.
Q. How long did you continue working for him?
A. I quit in 1955.
Q. What salary did you receive from Mr. DeLucia when you started to work for him in April, 1935?
A. I started working for Mr. DeLucia at $35 a week.
Q. At $35 a week?
A. That is right.
Q. And was this salary ever raised?
A. That is right.
Q. When was it raised?
A. The raise was in about 1938 or 1939.
Q. It was raised when?
1040 A. Up to $40.
Q. Well, when did the raise occur?
A. A few years after that I got $50 a week.
1041 Q. Now, the raise to $40.00, did that occur in 1938?
A. Something like that. I can't really picture the exact date of it.

Q. And the raise to $50.00, when did that occur?

A. That is right.

Q. When did that occur?

A. Ma'am?

Q. When did you get a raise to $50.00 a week?

A. I can't recall the right date. It must have been around 1940, 1941, something like that.

Q. Now, did you work steadily while you were working for Mr. DeLucia? Did you work steadily all the time?

A. That's right.

Q. Did you get paid every week?

A. That's right. I got paid by the month—that is, every week, that's right.

Q. You got paid what?

A. I got paid every week, that's right.

Q. You got paid every week?

A. I got paid every week, that's right.

Q. Who paid you every week?

A. Well, Mr. DeLucia paid, himself.

1042 Q. Were there any other employees at the Long Beach house besides yourself, Mr. Anorino?

A. Just myself.

Q. You were the only one?

A. That's right.

Q. No other household help?

A. No other help around.

Q. All right.

By Mr. Barnett: No further questions, your Honor.

By Mr. Stewart: No cross.

By Mr. Green: Nothing, your Honor, just a motion to strike on behalf of the defendant Bulger.

By the Court: The same ruling.

By the Witness: Thank you.

(Witness excused.)

1043 MORTON C. CHESLER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Would you tell us your full name, please?

A. Morton C. Chesler.

Q. Where do you live, Mr. Chesler?

A. 1492 Sheridan Road, Highland Park.

Q. Highland Park, Illinois?

A. Right.

Q. What is your profession?

A. Attorney at law.

Q. What is the name of the firm with which you are associated?

A. Perlman, Hecht & Chesler.

Q. Where is that firm located?

A. 10 South LaSalle Street, Chicago.

Q. Did that firm previously have another name?

A. Yes, it did.

Q. What was the old name of the firm?

A. Perlman, Goodman, Hecht & Chesler.

1044 Q. When was the name changed, approximately?

A. Approximately 1956 or 1957, I don't remember exactly.

Q. The name of the firm during 1947 was Perlman, Goodman, Hecht & Chesler, was it?

A. Correct.

Q. Do you have the records of the firm of Perlman, Goodman, Hecht & Chesler with you?

A. I do, sir.

Q. What records of the firm do you have?

A. I have an original ledger sheet of Perlman, Goodman, Hecht & Chesler, the old firm, under the name of Paul DeLucia, and a duplicate deposit slip of the same

firm which I produced pursuant to the subpoena served upon us.

Q. I hand you Government Exhibit No. 137, which is a photostat, and ask you if that is a true and correct photostatic copy of your original ledger sheet that you have there?

A. It is.

Q. I hand you Government Exhibit No. 138, and ask you if that is a true and correct copy of the original deposit ticket which you have there?

1045 A. It is.

By Mr. Barnett: Your Honor, I will offer in evidence the photostatic copies, Government Exhibits Nos. 137 and 138.

By the Court: Same ruling. They may be received subject to the original objection.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 137 and 138.)

By Mr. Barnett: May I read this, your Honor?

The deposit ticket, Government Exhibit No. 138, shows deposited for the account of Perlman, Goodman, Hecht & Chesler, October 17, 1947, with the American National Bank & Trust Company of Chicago, and written in longhand the words "DeLucia, costs and fees in full, cr. 85."

By Mr. Barnett:

Q. What does the "cr. 85" refer to?

1046 A. I believe it is a bookkeeping symbol, double entry books.

1047 By Mr. Barnett: "Currency, $1,820.00. Total credit, $1,820.00."

Exhibit No. 137 shows the name of client Paul DeLucia, then there is a description of various items such as traveling expense.

By Mr. Barnett:

Q. Are those items which your firm, Mr. Chesler, had expended on behalf of Mr. DeLucia?

A. Yes, in connection with this matter.

Q. There is a listing of expenses which comes to a total of $3,379.00—

A. That is not right.

Q. It is not?

A. Not three thousand.

Q. What is the amount?

A. The amount of the expense was $337.94.

Q. And the amount of fee was how much?

A. $1482.06.

By Mr. Barnett: Thank you. No further questions.

By Mr. Stewart: No cross examination.

* * *

1048 * * * ANTHONY BRADLEY EBEN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Anthony Bradley Eben.

Q. Where do you live, Mr. Eben?

A. 6 East Scott Street, Chicago.

Q. What is your profession?

A. I am an attorney at law and proctor in admiralty.

By Mr. Barnett: That is something that not many of us are.

By the Court: That is one of my troubles.

By Mr. Barnett:

Q. How long have you been a practicing attorney, Mr. Eben?

1049 A. Since approximately 1933.

Q. In Chicago, Illinois?

A. In Chicago.

Q. Where do you have your offices?

A. Presently at 11 South LaSalle.

Q. During the year 1943, did you have occasion to represent Mr. Paul DeLucia and others?

A. Yes.

Q. Where were your offices at that time?

A. 208 South LaSalle Street, Chicago.

Q. Will you tell us the circumstances under which you represented Mr. DeLucia and these others?

A. The circumstances?

Q. Yes, how did you come into the picture?

A. I was retained formally by Mr. Gioe and Mr. DeLucia and Mr. Campagna, Maritote, Mr. Pierce, and one other, shortly after indictments were returned against them, two indictments returned against then in the Southern District of New York.

1050 Q. When were the indictments returned, approximately?

A. About the middle of March, 1943.

Q. How long after that were you retained?

A. Within a week or two.

Q. Did you have a meeting with these men prior to your being retained?

A. Prior to the formal retaining?

Q. Yes.

A. Yes.

Q. Was that shortly after the middle of March, 1943?

A. Yes.

Q. Where did it take place?

A. In my office, 208 South LaSalle.

Q. Who was present at the meeting?

A. Mr. Gioe, Mr. Campagna, Mr. D'Andrea, Mr. Pierce, Mr. DeLucia, and one other person I can't recall.

Q. How many men altogether?

A. I think there were six.

Q. Were all six of these defendants in the indictment in the New York case?

1051 A. Yes.

Q. What was the discussion at that time in your office?

A. On the first occasion?

Q. Yes, on the first occasion.

A. The discussion among the seven of us was whether or not I would undertake to represent the various defendants in the New York case.

Q. Did you agree to represent them in that conversation?

A. I did not at that particular time undertake to represent them. I wanted to think the matter over.

Q. Did you have a subsequent meeting with the same men?

A. Yes, I did.

Q. Shortly thereafter?

A. Within a week or two.

Q. What was the discussion on that occasion?

A. I announced at that time that I would undertake to represent the defendants in the New York case along with other counsel.

1052 Q. Along with other counsel?

A. Yes. By that, I mean we were to retain New York counsel, local counsel, and so on.

Q. Did you have any discussion about your fee?

A. Yes, we did.

Q. What was the discussion?

A. The amount?

Q. What was said, and by whom?

A. We subsequently arrived at a fee of $15,000 with a bonus for success, which we never earned.

Q. Were you paid that fee?

A. Yes, I was.

Q. What were the circumstances under which you were paid the fee?

A. I was paid it on two occasions, as I recall. A group of the men came in—when I say "the men," I am referring to the same six whose names I mentioned before—and they paid me in my office. I have forgotten the exact division of the $15,000.

Q. There were two payments constituting a total of $15,000?

A. As I recall, there were two payments, yes.

Q. By check or in currency?

1053 A. In currency.

Q. Was that shortly after you were retained?

A. Yes.

Q. Then all of this took place prior to the summer of 1943, is that correct?

A. That is correct.

Q. What subsequently happened in so far as your representation of these people was concerned?

A. Well, quite a bit.

1054 Q. Will you give us a brief outline of what it was?

A. Well, we went to New York on a number of occasions and we filed the usual dilatory motions there, such as demurrage and the like, bills of particulars. We appeared in New York and argued them. We prepared for trial all during the summer, and subsequently in September of that year, I believe, went to trial in New York.

Q. Did you actively participate throughout the trial?

A. Yes, I did.

Q. During the course of the summer of 1943, was there any other Chicago lawyer involved in this matter?

A. Yes, Mr. Bulger was associated with me in the matter.

Q. Mr. Joseph Bulger, one of the defendants in this case?

A. Yes.

Q. Did he go back and forth to New York with you?

A. On occasion.

Q. During the course of the trial itself, how
1055 many lawyers were involved in that matter?

A. Quite a few.

Q. Who were they?

A. Not necessarily in the order of their importance: James D. C. Murray, and Joe Bulger, Otto Christianson from California, J. C. Mandel from Newark, myself, Bert Wegman, in New York, and one or two other lawyers whose names I can't recall now.

Q. Each of the various lawyers entered an appearance, did they not, in the court to indicate the client that they were representing?

A. Formal appearances were filed by various lawyers no behalf of various defendants, that is right.

Q. On behalf of whom did you file a formal appearance?

A. I filed, although I represented all six, I filed formally in court on behalf of Charles Gioe and Paul DeLucia.

Q. Who did Mr. James D. C. Murray represent? Did he represent all six also?

A. Yes.

Q. The same as you did?

1056 A. Actually Mr. Bulger, Mr. Murray and I represented all six, but for strategic purposes at the trial, we decided that we would enter our appearance, each one, for two defendants.

So I represented Mr. DeLucia and Mr. Gioe. Joe Bulger represented Maritote, I believe, and D'Andrea. Jim Murray represented Campagna and the sixth fellow, whoever that was.

Q. Now during the summer preceding the trial and during the fall and throughout the trial, you had expenses, did you not, Mr. Eben?

A. Yes, I did.

Q. Were you reimbursed for those expenses?

A. Yes, I was.

Q. What was the amount of the reimbursement for the expenses you received?

A. Are you referring to my living expenses in New York?

Q. Yes.

A. Or to expenses of the trial itself?

Q. No, I am referring to your personal expenses.

A. I can't tell you how much that was. It was my hotel bill, whatever it was.

Q. Did you pay it yourself or did somebody pay
1057 it for you?

A. On occasion I paid it and was reimbursed, by whom I can't tell you, and on other occasions it would be paid for me.

Q. Well, did you at any time receive a lump sum in reimbursement?

A. You mean for the entire amount?

Q. For any part of the amount of your expenses while in New York?

A. No. The way the expenses were handled varied from week to week or month by month. The trial took, I think, approximately four months, from September, I believe, until the latter part of December, and my hotel bill would accrue, of course, weekly. Some weeks I would pay it myself and get reimbursement in that fashion, and other weeks I would mention the fact that I owed a hotel bill, and it would be paid for me.

Q. To whom would you mention it?

A. Oh, on some occasions to Mr. Bulger and on some occasions to one or more of the defendants.

Q. What hotel were you staying at?

A. Hampshire House.

Q. Do you remember what your weekly bill was?

1058 A. That was fifteen years ago. I can't remember. It was pretty big, a pretty good bill, I can tell you that.

Q. What do you mean by a pretty big bill?

A. I think somewhere around $900.00 a month, something like that.

Q. $900.00 a month?

A. Yes, including food and so on.

1059 Q. Sometime ago, Mr. Eben, did you give an affidavit to an Internal Revenue agent concerning the expenses?

A. Yes, I did.

Q. And your memory was clearer in your mind at the time, was it?

A. Yes, it was closer to the events which I described.

Q. And is Government Exhibit No. 160 that affidavit?

A. Yes, that is my affidavit, with the exception of the penciled figures on there.

Q. Yes.

Does that refresh your recollection with respect to the receipt of expense money by yourself?

A. I did not hear the question.

Q. Does that refresh your recollection with respect to receipt by you of the expense money?

A. No. If you are talking about the item in here which I describe as the receipt of expense money in the amount of $2,450 and $800—

Q. Yes.

1060 A. I thought I distinguished that before when I asked you whether or not you were referring to my personal living expenses.

Q. I am sorry if I misunderstood you, Mr. Eben. What was that expense money?

A. This expense money which was referred to on my affidavit, was expense money with relation to the preparation for the trial itself.

Q. And how much was it that you received, Mr. Eben?

A. The total, $3,250.

Q. Will you describe what that was for?

A. For preparation for trial. It included, if I may say by way of description, a transcript of a prior case in New York. We had to pay for that.

We had to pay for the court reporter and things such as that. It is such type of expense that I am not referring to.

Q. Who paid for that?

A. One of the defendants. I couldn't tell you.

Q. You don't recall who?

A. No.

Q. Now, did you receive another payment?

1061 A. Yes, in New York.

Q. What was the amount of that payment?

A. I received a payment of—this was shortly after we went to trial, I believe, in New York,—of $5,000, of which I turned $1,450 over to Otto Christensen in connection with California expenses, whatever they were, and the balance to Jim Murray in New York for his New York expenses in connection with preparation for trial.

Q. Who did you get that money from?

A. One of the defendants.

Q. Do you know which one?

A. I can't say.

Q. Do you know the approximate total cost of that trial?

A. I couldn't possibly estimate it.

Q. You couldn't?

A. No, and I had nothing to do with that.

All of these expenses which I have referred to, were expenses incurred in preparation prior to trial.

1062 Q. Did you do any work on the appeal, Mr. Eben?

A. No.

Q. The trial concluded just before Chrismas, 1943, did it?

A. Yes, just prior to Christmas.

Q. And did you have anything to do with any of the defendants or any of the other people after the trial was over?

A. As I recall, we made a motion before Judge Bright, who tried the case in New York, immediately after the jury had come in with its verdict. On the motion, by virtue of our motion, Judge Bright permitted the defendants to return to Chicago over Christmas, over the holidays, to spend the holiday here.

They returned to New York, I believe, and surrendered, on New Year's eve.

Q. Were you present at the surrender?

A. Yes, I was there.

Q. Did you have anything further to do with the case?

A. Yes. For a period—well, a short period, I
1063 worked in connection with a motion for a reduction of bail in the Court of Appeals for the Second Circuit.

Then, thereafter, Mr. Stewart came in as my substitute.

Q. Did you receive any further fee?

A. No.

By Mr. Barnett: No further questions.

By Mr. Stewart: No cross examination.

1064-1096 • • •

1097 HARRY A. LODDING, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?
A. Harry A. Lodding, L-o-d-d-i-n-g.
Q. Where do you live, Mr. Lodding?
A. 4015 Brighton Place, Chicago.
Q. What is the name of the street?
A. Brighton Place.
Q. What is your business or occupation?
A. Insurance underwriting.
Q. With what firm are you associated?
A. Miles & Miles.
Q. Where are they located?
A. 175 Jackson, West Jackson.
Q. In Chicago?
A. In Chicago.
Q. What is your position with Miles & Miles?
A. Underwriting and production.
Q. You are an underwriter?
A. Yes, sir.

Q. Have you brought with you certain records
1098 of Miles & Miles, Incorporated?

A. I have.

Q. Do those records reflect insurance policies written on the residence at 812 North Lathrop Avenue, River Forest, Illinois?

A. These are on the contents.
Q. On the contents?

A. Yes.

Q. Of that reside[illegible]?

A. Of that residence, yes.

Q. Who is the broker on the account?

A. Mr. Bulger.

Q. Is that Joseph I. Bulger?

A. I believe that is his first name. I don't have it here.

Q. What is the name of the insured?

A. Nancy DeLucia.

Q. D-e-L-u-c-i-a?

A. That is right.

Q. What policy did your firm issue on the contents of the premises at 812 Lathrop?

A. In 1945, March 27, for a five year period, we issued a $5,000.00 policy covering the contents, and it was again renewed March 27, 1950, for five years.

1099 Q. What was the premium on the first policy?

A. $76.00.

Q. Was that the premium for five years?

A. For five years, yes.

Q. Was that paid?

A. That was paid, yes.

Q. The date on which it was paid? Do you have the date of the payment?

A. No, I don't have the date of that payment, the first one.

Q. Do you know if it was paid, from your records?

A. Yes, it was.

Q. What the a[illegible]ount of the premium on the second policy?

A. $76.00 also.

Q. That policy began on what date?

A. March 27, 1950.

Q. Was that premium paid?

A. That premium was paid, yes.

Q. Mr. Lodding, I have a letter here marked Government's Exhibit No. 148 on the stationery of Miles & Miles. I will ask you if the contents of that letter correctly describe the issuance of those insurance poli-
1100 cies as it is shown in the records of your company.

A. Yes, it does.

Q. Do you know who the author of that letter is?

A. Mr. Miles, Jr.

Q. Of your firm?

A. Yes.

By Mr. Barnett: Your Honor, I will offer in evidence Government's Exhibit No. 148.

By the Court: Same ruling.

1101 By Mr. Barnett: Your Honor, I will offer Government Exhibit No. 148.

By the Court: The same ruling.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 148.)

By Mr. Barnett: I have no further questions of Mr. Lodding.

By Mr. Stewart: No cross.

(Witness excused.)

AUSTIN J. O'MALLEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Austin J. O'Malley.

Q. Where do you live, Mr. O'Malley?

A. 1120 Edmer Avenue, Oak Park.

Q. What is your occupation?

A. Insurance, general insurance.

Q. How long have you been engaged in that business?

1102 A. 35 years.

Q. Are you engaged as a general agent.

A. General agent, yes, O'Malley & McKay.

Q. O'Malley & McKay.

A. Yes. I am president of the firm.

Q. As general agent, you write insurance for brokers?

A. Yes, sir.

Q. Have you ever written insurance for the account of Joseph I. Bulger?

A. Yes, sir.

Q. What insurance have you written on the account of Joseph I. Bulger for property located at 812 North Lathrop Avenue, River Forest?

A. Well, we wrote a couple of policies. We wrote one policy back in April, April 2nd, 1945, for five years, covering—

Q. What kind of a policy was that?

A. Fire insurance, covering the building at 812 North Lathrop Avenue.

Q. What was the name of the insured?

A. Nancy DeLucia.

Q. Now, that was the building rather than the

1103 contents, is that correct?

A. That was on the building.

Q. And that was written April 2, 1945, for five years. What was the premium?

A. $76.

Q. Was the premium paid?

A. Yes, sir.

Q. Did you write any other policy?

A. Well, we renewed that policy then, following when it expired, April 2, 1945—renewed it April 2, 1950, for five years again, with the premium of $76.

Q. The face amount of both of those policies was how much?

A. The face amount of both of them?

Q. Of each of them.

A. Of each of them, $76 apiece.

Q. How much would be paid on the policy in event of loss?

What was the value of the policy? How much was the insurance?

A. Well, that I haven't got right here. It would be in the neighborhood of $10,000, I think—yes,
1104 $10,000.

Q. Is $76 the premium?

A. The premium for five years, yes.

Q. It amounted to $10,000, the policy?

A. Yes.

1105 Q. I hand you what has been marked Government's Exhibit 149, which is a letter, and ask you if you prepared that letter or if your signature appears on there.

A. Yes, I prepared that, yes.

Q. Does that letter correctly describe the insurance issued by your firm on the premises at 812 Lathrop Avenue?

A. Yes, sir.

By Mr. Barnett: Your Honor, I will offer Government's Exhibit No. 148.

By the Court: The same ruling.

By Mr. Barnett: Pardon me. It is 149, your Honor.

(Said document, so offered and received in evidence, was marked Government's Exhibit 149.)

By Mr. Barnett: I have no further questions of Mr. O'Malley.

By the Court: No cross examination?

By Mr. Stewart: No cross.

By Mr. Green: No cross. The same motion, your Honor.

By the Court: All right.

(Witness excused.)

1106 By Mr. Barnett: Your Honor, I have some stipulations which I would like to read.

Stipulation No. 10.

It is further agreed between the parties hereto:

That DeLucia, on or about November 15, 1938, purchased from Mrs. Hannah M. Smith personal property located at 812 Lathrop Avenue, River Forest, Illinois, for $1,500.00 in cash, as indicated in Government's Exhibit No. 31.

Stipulation No. 11.

It is further agreed:

That Paul DeLucia paid the following Cook County tax warrants to the Treasurer of Cook County, covering his property (Lot 6, Block 12) located at Chicago and Lathrop Avenues, River Forest, Illinois, on December 31, 1940 in the total amount of $340.55.

The details of the above expenditures are contained in Government's Exhibit No. 32.

1107 Stipulation No. 12.

It is further agreed:

That Paul DeLucia paid the following real estate taxes and personal property taxes on his residence and property contained therein at 812 Lathrop Avenue, River Forest, Illinois, during the period 1940 to 1950, inclusive.

The total amount of the taxes of the real property paid, real property taxes paid, was $14,591.94.

The details by year of the payments are on Government's Exhibit No. 33.

The total amount of the personal property taxes paid for the period 1940 to 1947 was $481.19 and the yearly breakdown is contained in Government's Exhibit No. 33.

Stipulation No. 17.

It is further agreed:

That Paul DeLucia expended the following funds in farm repairs, maintenance and improvements during the year 1942:

1108 Corn crib, $4,738.76.

Silo, $989.80.

Combination of repairs to house, phosphates and plumbing, $3,433.18.

Total, $9,161.84.

The details of this expenditure are contained in Government's Exhibit No. 38.

1109 Stipulation No. 18.

It is further agreed:

That Paul DeLucia paid the following medical fee to Dr. Daniel H. Levinthal, 801 South Beverly Drive, Beverly Drive, Beverly Hills, California, on July 20, 1942: $2,500.00.

The details are on Government Exhibit No. 39.

Stipulation No. 19.

It is further agreed:

That Paul DeLucia expended the following amount for fuel oil used in heating the DeLucia residence at 812 Lathrop Avenue, River Forest, Illinois, during the period 1942 to 1950, inclusive: A total figure of $4,961.00.

Details and the yearly breakdown are contained in Government Exhibit No. 40.

Stipulation No. 20.

It is further agreed:

That Paul DeLucia purchased the following house-
1110 hold furnishings from Dominick Sibilano, 3140 North Linder Avenue, Chicago, Illinois:

In 1939, the total purchases were $18,702.84.

In 1943, the total purchases were $1,881.79.

The details of these expenditures are contained in Government Exhibit No. 41.

Stipulation No. 21.

It is further agreed:

That during 1943, Paul DeLucia had demolition work done at his Long Beach, Indiana, home by E. D. Glidden, a general contractor.

That Paul DeLucia expended the following moneys in connection therewith: During the year 1943, $1,637.50.

Details of these expenditures are contained in Government Exhibit No. 42.

Stipulation No. 22.

It is further agreed:

That Paul DeLucia purchased the following stock
1111 of the TransAmerica Corporation during the year 1937:

600 shares of TransAmerica stock at a cost of $8,550.48, as detailed in Government Exhibit No. 43.

Stipulation No. 25.

It is further agreed:

That Paul DeLucia expended the following funds in hospital fees at Michael Reese Hospital:

In 1941, $100.

In 1942, $416.25, $416.25, as detailed in Government Exhibit No. 44.

1112 Stipulation No. 26.

It is further stipulated and agreed:

That Paul DeLucia paid a legal fee to Eugene Bernstein of $1,000.00 on May 9, 1945, as detailed in Government's Exhibit No. 45.

Stipulation No. 27.

It is further agreed:

That Paul DeLucia paid Anthony Giaconi, 1315 North 11th Avenue, Melrose Park, Illinois, the following salaries for caretaker's services at 812 Lathrop Avenue, River Forest, Illinois,—paid him a total of $15,210.00 for the period 1941 through and including 1950, at the rate of $1,560.00 per year, except, in the year 1950, he paid him a total of $1,170.00.

The details of the above expenditures are in Government's Exhibit 46.

Stipulation No. 28.

It is further agreed:

1713 That Paul DeLucia expended the following moneys for household furnishings from A. Contursi & Son as follows:

1946, $632.00.

1948, $612.00.

Details of these expenditures are in Government's Exhibit No. 47.

Stipulation No. 29.

It is further agreed:

That Paul DeLucia expended the following moneys to the Northern Indiana Public Service Company for stop No. 29, Long Beach, Indiana:

For the years 1946 to and including 1950, he expended $1,864.92, details of which are on Government's Exhibit No. 48.

Stipulation No. 30.

It is further agreed:

That Paul DeLucia advanced to the World Amusement Corporation of Illinois the sum of $1,000.00 on or about April 28, 1934, for which he received 133⅓ shares of World Amusement stock in return.

Details of this expenditure are in Government's Exhibit No. 49.

1114 Stipulation No. 31.

It is further agreed—pardon me, I mean Stipulation No. 35.

It is further agreed:

That Paul DeLucia mortgaged his residence at 812 Lathrop Avenue, River Forest, Illinois, in the amount of $30,000.00 on July 25, 1939, for a five year term with interest payable at 6 per cent per annum, payable semi-annually each February 1st and August 1st.

That one Steve Matalone, now deceased, was the mortgagee in this transaction, and that on July 25, 1939 Paul and Nancy DeLucia executed the following trust deed to the Chicago Title and Trust Company:

Deed No. 12346454 dated July 25, 1939.

Details of this mortgage loan are contained in Government's Exhibit No. 50.

1115 Stipulation No. 37.

It is further agreed:

That the books and records of Ray J. Beahan, Michigan City, Indiana, when available at a time prior to destruction showed and it is agreed that Paul DeLucia made the following payments and purchases at the time indicated, in connection with the Long Beach, Indiana, house as follows:

1934, downpayment on purchase of house, $6,888.70.

1935, paid on purchase of lots 35, 36, 41 and 42, $2,800.00.

1939, paid on purchase of lots 13 and 14, $1,500.00.

1940, paid on purchase of lots 12 and 15, $1,500.00.

Stipulation No. 31.

It is further stipulated and agreed:

That Paul DeLucia reported the following expenditures on his monthly report Parole Form 24:

During the year 1947:

1116 During the month of August, zero.

During the month of September, $3,736.76.

October, $8,631.58.

November, $9,047.00.

December, $6,919.35, for a total of $28,334.69, as detailed in Government Exhibit No. 51.

Your Honor, without re-reading the exhibit numbers, I offer in evidence all the exhibit numbers which I referred to in reading the stipulations, and I would like to have them admitted.

By the Court: They may be received in evidence.

By Mr. Stewart: We are still waiting for copies of some of those.

By the Court: Subject to the same objection.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 31, 32, 33, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51.)

1117-1119 * * *

1120 * * * VIVIAN G. MILLER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

1121 A. Vivian G. Miller.

Q. Where do you live, Miss Miller?

A. 1447 West Balmoral.

Q. What is your occupation?

A. Accountant.

Q. By whom are you employed?

A. Schmidt, Garden & Erikson.

1122 Q. Is that an architectural firm?

A. Yes, sir.

Q. Where are the offices located?

A. 104 South Michigan.

Q. Miss Miller, I will hand you Government Exhibits Nos. 105, 106, 107 and 108, and ask you if these are records of receipts of the architectural firm of Schmidt, Garden & Erikson?

A. They are.

Q. Were those records kept under your supervision?

A. Yes, sir.

Q. And were they kept in the ordinary course of business?

A. Yes, sir.

Q. Was it the custom of your firm to keep such records?

A. Yes, sir.

By Mr. Barnett: Your Honor, I will offer in evidence Government Exhibits 105, 106, 107 and 108.

By Mr. Green: There will be no objection, although I absolutely fail to perceive the materiality.

1123 By the Court: Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 105, 106, 107 and 108.)

By Mr. Barnett: I have no further questions of Miss Miller.

(Witness excused.)

1124 RAYMOND S. RATAJAK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. Raymond S. Ratajak, R-a-t-a-j-a-k.

Q. Where do you live, Mr. Ratajak?

A. 418 Circle Avenue, Forest Park, Illinois.

Q. What is your occupation?

A. Vice president and cashier, Forest Park National Bank.

Q. And in that position, do you have custody and control of records of deposits made in the bank?

A. Yes, sir, I do.

Q. And have you been subpoenaed to bring certain records with you?

A. Yes, sir, I have.

Q. And to what account do those records pertain?

A. To the account of Paul DeLucia.

Q. Mr. Ratajak, I hand you what has been marked Government's Exhibit 142, a photostatic copy, and
1125 ask you if those are signature cards on the account that you have just mentioned.

A. Yes, sir, they are.

Q. And have you compared them with the original cards in your possession?

A. I did, yes, sir.

Q. I hand you Government's Exhibit No. 143, a group exhibit consisting of, I believe it is nine pages, and I ask you if that is a true and correct photostatic copy of the bank's ledger account in the name of Paul DeLucia.

A. Yes, sir, it is.

Q. Is that the name in which the account is carried, Paul DeLucia?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 144, a group exhibit consisting of 41 deposit tickets, I believe, and ask you if those are true and correct photostatic copies of deposit tickets connected with that account.

A. Yes, sir, they are.

Q. Have you compared those with the originals, outside of court?

A. Yes, sir.

1126 Q. I hand you Government's Exhibit No. 145, and ask you if you will identify it for us.

A. This is a liability ledger sheet indicating a loan negotiated by Mr. Paul DeLucia.

Q. With the bank?

A. With the Forest Park National Bank, yes, sir.

Q. In what amount?

A. $11,000.00.

Q. When was the loan negotiated?

A. March 30, 1948.

Q. How long did it remain in existence?

A. Until March 27, 1951.

1127 Q. And I hand you Government Exhibit No. 146 and ask you if you can identify that document.

A. This is a collateral card indicating the collateral that was offered for the loan just mentioned.

Q. Now, with respect to the account at your bank, when was it opened, the bank account?

A. I will have to check the cards.

September 19, 1947.

Q. September 19, 1947?

A. Yes, sir.

Q. How long did it remain open?

A. January 20, 1949.

Q. Is that when the account was closed?

A. Yes, sir.

Q. Who were the signators on that account?

A. Paul DeLucia and Nancy DeLucia.

Q. Was that a checking account?

A. Yes, sir, it was.

By Mr. Barnett: I offer in evidence, your Honor, the photostatic copies of the bank records, being Government Exhibits Nos. 142, 143, 144, 145 and 146.

1128 By the Court: The same ruling, and the same objection.

By Mr. Green: Yes.

By Mr. Barnett: No further questions.

By Mr. Stewart: No cross.

By Mr. Green: No cross.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 142, 143, 144, 145 and 146.)

By the Court: That's all. Thank you very much.

(Witness excused.)

GEORGE A. RAPP, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?

A. George A. Rapp, R-a-p-p.

Q. Do you spell your name R-a-p-p?

A. Right.

1129 Q. Where do you live?

A. Naperville, Illinois.

1130 Q. What is your occupation?

A. I am retired now.

Q. How long have you been retired?

A. Since May 1st.

Q. Of 1958?

A. 1958.

Q. Prior to retiring, what was your occupation?

A. Insurance.

Q. How were you in the insurance business?

A. I was supervising general agent.

Q. For how long?

A. For a period of 28 years and three months.

Q. Prior to that what were you?

A. In the insurance business.

Q. As supervising general agent, what was the name of the firm with whom you were associated?

A. George A. Rapp & Company.

Q. George A. Rapp, being yourself?

A. That is right.

Q. Do you know the defendant in this case, Joseph Imburgio Bulger?

A. Yes, I do.

Q. Do you see him in the court room?

A. Right over there.

1131 By Mr. Barnett: Let the record show that he has identified Mr. Bulger.

By Mr. Barnett:

Q. How long have you known Mr. Bulger?

A. Since 1923.

Q. How did you become acquainted with him?

A. We appointed the Citizens State Bank, or rather the president of the Citizens State Bank, as an agent of ours, and through being in there, I became associated or became acquainted with Joe.

Q. Under what name was he known at that time?

A. Joe Imburgio.

Q. What was his position in the bank?

A. I believe a teller.

Q. Did you continue your associations with him after 1923?

A. After the bank closed, which was in the early thirties, we appointed Joe as a representative of our company, yes.

Q. To sell insurance policies?

A. That is right.

Q. Between 1923 and sometime in the thirties when the bank closed, was Mr. Imburgio then working at
1132 the bank?

A. That is right.

Q. Through Mr. Bulger did you have occasion to sell any insurance policies on the residence of Paul DeLucia?

A. Yes, we did.

Q. What type of insurance did you sell on that residence?

A. Fire and extended coverage.

Q. Does that mean fire on the contents or on the residence itself?

A. Well, fire on the building and fire on the household furniture.

Q. Do you have records of the premiums received that is, the gross premium amount charged for those policies that you wrote on that building?

A. For what period?

Q. Do you have records for any period?

A. 1940 to 1950, $830.80 gross.

Q. That is the total premium?

A. That is gross.

1133 Q. Do you have that broken down by years?

A. Well, it runs 1940, '43, '45, '48 and '50.

Now there were approximately five policies written which were written for five year periods, and then renewed for a five year period.

Q. All right.

Can you tell us about the first policy?

A. That was dated December 14, 1940.

Q. Can you tell us what type of policy it was?

A. It was fire and extended coverage.

Q. On the residence or the contents?

A. Presumably on the dwelling. The big end of it was on the dwelling.

Q. You are not sure which it was?

A. Well, I can't tell from our record, but it was on either one or the other.

Q. What was the gross premium?

A. The gross premium on the first one was $26.

Q. Then did you write additional policies?

A. Yes, we did.

Q. When did you write additional policies?

A. The next one was May 14, 1943.

1134 Q. Did you write more than one policy on that date?

A. We wrote one—we wrote eight.

Q. On May 14?

A. Wait a minute. Six different policies—five different policies, and three of them that were in force were extended.

Q. What was the nature of those policies?

A. Dwelling or household furniture.

Q. You don't know which?

A. One or the other.

Q. Do you know the face amount of the policies?

A. Yes, I do. The first one in December of 1940 was for $2,500.

The other four in succession were $2,500 each. Then there—

Q. Those that were $2,500 each had what gross premium on them?

A. Three of them were $26. Two of them were $20 and four were—no, one was $12. The other three additional charges were $12 each.

Q. What was the face amount of the insurance covered by those several policies, if you can tell us?

1135 A. $15,000.

Q. Now I am talking about the policies written in May, 1943.

A. They were $2,500 each.

Q. $2,500 each?

A. Right.

Q. And there are different premiums on them, are there not?

A. That is right.

Q. Are they all for the same face amount?

A. All for the same face amount.

Q. But different premiums?

A. Different premiums, yes.

Q. Some for the contents and some for the house?

A. Presumably so.

1136 Q. That would account for the difference in premiums?

A. That is right.

Q. Then did you write an additional two policies in the latter part of 1943?

A. In November 1943 we wrote two policies of $15,500.00 each, making a total of $31,000.00.

Q. What was the premium on those two policies?

A. $198.40 each.

Q. Was that fire insurance on the residence?

A. Fire and extended coverage, right?

Q. Then did you write some further insurance?

A. Yes, we did.

Q. When was the next policy?

A. December 14, 1945 we wrote $2500.00. On the same date we wrote another $2500.00 policy.

May 14, 1948 we wrote a $2500.00 policy. In fact, on that date we wrote three policies, two of $2500.00 and one of $5000.00.

Q. Are those renewals of the policies that were written in 1943?

A. Yes, they are.

Q. And in 1950, did you write any policies?

A. Wrote two policies on December 14 of $2500.00 each and—

1137

Q. Were those renewals of the two policies written in December of 1945?

A. One of them was—no, I can't tell that.

Q. Are they the same premium?

A. One is for $26.00 and the other for $38.00.

Q. And in December 1945, what were the premiums?

A. $26.00 and $38.00.

Q. The same premiums?

A. That is right.

Q. Are those five year premiums?

A. They are, sir.

Q. Are all the premiums listed five year premiums that you are talking about?

A. They are.

Q. I hand you what has been marked Government's Exhibit No. 147, which is a letter signed by you, and ask you if on that letter you state correctly the amounts of premiums paid, that is, the gross and net premium paid to your firm in connection with these various policies that you have testified about?

A. Yes, that represents all the items.

By Mr. Barnett: Your Honor, I will offer Govern-

1138

ment's Exhibit No. 147.

I have no further questions of this gentleman.

By the Court: Same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 147.)

By Mr. Stewart: No cross.

(Witness excused.)

1139 JOHN G. MALONEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

* * *

1140 * * *

1141 * * * Q. I hand you Government Exhibit No. 151 and ask you if this is a true and correct photostatic copy of that transcript.

A. It is.

By Mr. Barnett: Your Honor, I will offer Govern-

1142 ment Exhibit No. 151.

No further questions.

I will withdraw him and put another witness on.

By Mr. Stewart: I don't want to cross examine him, Judge, but I just thought I would like to look at it before we do anything else.

By Mr. Green: Mr. Bulger will move to strike the testimony for the general reasons previously stated.

By the Court: You have a general objection, and that stands.

Mr. Stewart will be given a chance to go over it and to cross examine him on it.

By Mr. Barnett: I would like to withdraw Mr. Maloney while Mr. Stewart is studying the transcript, to put another witness on for a few minutes.

By the Court: All right.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 151.)

1143 By the Court: Are you, then, postponing that until Monday?

By Mr. Stewart: I don't believe I need to cross examine Mr. Maloney. It is just a question of whether I am

going to object to the admission of this. I assume he is telling the truth.

By the Court: Then there is no cross examination?

By Mr. Stewart: No cross examination.

By Mr. Barnett: Your Honor, if the document is objected to, why then, I will have to have the conversation from Mr. Maloney that took place on that date.

By the Court: I will give you a chance to recall him.

By Mr. Barnett: All right.

Will you step down, Mr. Maloney?

Mr. Maloney is from out of town.

I don't want to hold him any longer than I need to. He can wait for a while, though.

(Witness withdrawn.)

1144 By the Court: How many more witnesses have you?

By Mr. Barnett: This is the last one, your Honor.

By the Court: I beg your pardon?

By Mr. Barnett: This is the last one.

I believe I have another witness that I was unable to get hold of for today. It was just a short one that we may put on Monday.

Mr. Szwed.

MATTHEW E. SZWED, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please.

A. Matthew E. Szwed.

Q. Where do you live, Mr. Szwed?

A. Chicago, Illinois.

Q. And where are you employed?

1145 A. District Director of Internal Revenue, Chicago.

Q. What is your position with the District Director's office?

A. I am chief of computation, verification, matching checks.

Q. And in that position, do you have custody of and access to income tax returns filed by taxpayers?

A. Yes, sir, I do.

Q. For the County of Cook, Northern District of Illinois?

A. Yes, I do.

Q. Do you have access to all records concerning the Director's record of returns filed?

A. Yes, I do.

Q. And the payments made?

A. Yes, I do.

Q. Have you made a search for income tax returns filed under the name of Nancy Gigante?

A. Yes, I did, sir.

Q. For what period of time?

A. 1920 through 1926.

Q. And did you find any record of returns filed

1146 in that name?

A. No, I did not find any records, sir.

Q. Have you made a search for income tax returns in the name of Nancy DeLucia?

A. Yes, I did, sir.

Q. For what period?

A. 1927 through 1933.

Q. Did you find any returns filed under that name?

A. I find no record of returns being filed.

Q. Does the District Director's office keep a file of gift tax returns?

A. Yes.

Q. Did you search, in the files of the District Director's office, for gift tax returns filed in the name of either DeLucia or Gigante?

A. I did, sir.

Q. For what years?

A. 1920 through 1950.

Q. Did you find any such returns filed?

A. No record of returns being filed.

1147 Q. Does the District Director's Office keep a record of the state tax returns filed?

A. Yes, it does, sir.

Q. Did you search those records for any record of a state tax return being filed in the name of DeLucia or Gigante?

A. Yes, I did, sir.

Q. Did you find the record of any such returns being filed?

A. I find no record being filed.

Q. For what period of time?

A. 1920 through 1950.

Q. And did you search the records for any income tax returns filed under the name of Salvi under the period of time 1920 through 1934?

A. Yes, I did, sir.

Q. Did you find any record of such being filed?

A. No record of such returns being filed.

Q. Now, I hand you, Mr. Szwed, what has been marked Government Exhibit No. 156, which is an income tax return, and ask you if that return was filed with your office.

A. This return was filed in the Chicago office 1148 on April 15, 1957.

Q. And how can you tell that?

A. By the receipt stamp.

Q. It is marked on the face of the return?

A. It is marked on the face of the return.

Q. For what year is that return?

A. This is for the taxable year of 1956.

Q. Whose return is it?

A. It is the return of Paul DeLucia and Nancy DeLucia.

By Mr. Barnett: Your Honor, I offer this document. Government Exhibit No. 156, the 1956 return of Paul an Nancy DeLucia, for the limited purpose of showing th cost as stated in the return, of certain improvements o real estate owned by Mr. DeLucia and acquired by hi prior to 1956 but sold in the year 1956.

By Mr. Stewart: Will you read the part off which yo are interested in and then we don't need the exhibit?

Is that all right?

By the Court: I have no objection, if that 1149 agreeable to both sides.

By Mr. Stewart: Read the part off that wh you are interested in.

By Mr. Barnett: It is an entire couple of pages, y Honor. If we may do it this way, your Honor—

By the Court: Let us receive it temporarily and Mon we can stipulate on which part to eliminate.

By Mr. Stewart: He can probably have the part ph stated that he wants.

By the Court: All right. It may be received in dence, subject to adjustment Monday or Tuesday.

(Said document, so offered and received in dence, was marked Government Exhibit No. 156.

By the Court: Any cross examination?

By Mr. Stewart: No, your Honor.

By Mr. Green: No your Honor.

By Mr. Barnett: No further questions of this w tness, your Honor.

By the Court: Thank you very much.

1150 All right.

(Witness excused.)

By Mr. Barnett: I have no further witnesses, your Honor.

By Mr. Stewart: I don't see anything startling or damaging except that it is: "It shook the hand that shook the hand that shook the hand of John L. Sullivan." It is hearsay. It is what Mrs. DeLucia—

By the Court: Is there a legal objection?

By Mr. Stewart: I don't see any harm in it.

By the Court: All right. It may be received in evidence.

By Mr. Barnett: May I read it, your Honor?

By the Court: I beg your pardon?

By Mr. Barnett: I was going to read it.

By the Court: It is in evidence. Read it Monday.

By Mr. Barnett: Fine.

1151 By Mr. Barnett: May I stop for just a second, your Honor?

May I just read this one stipulation, your Honor.

Stipulation No. 38.

It is further agreed between the parties hereto that Paul DeLucia married Nancy Gigante on January 30, 1927, in Chicago, Illinois.

By the Court: All right.

Ladies and gentlemen, we have reached the point now where we are going to recess until Monday morning at 10:00 o'clock.

I think we are making remarkable progress, and I hope you are enjoying your experience. We are trying to make it as comfortable as we know how for you folks.

Please don't discuss this case with anyone over the week-end, and let no one talk to you about it. Our primary

consideration is to be fair and impartial and to keep you so, for both sides.

1152 I don't want you to be influenced by anything outside the court room, only that which you hear from the witness stand and from the lawyers in my presence and my rulings on competent and proper testimony.

I can't repeat it too often and I can't accentuate it too strongly. Our purpose here is to administer justice and be fair. I want you to be in that same mind, and I hope you have a very nice week-end.

Q. Thank you.

* * *

1153-1185 * * *

1186 * * * WALTER J. WOLF, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you tell us your full name, please?
A. Walter J. Wolf.
Q. Where do you live, Mr. Wolf?
A. 2519 Marion Lane, Wilmette.
Q. What is your business or profession?
A. General insurance agent.
Q. What is the name of your firm?
A. Wolf, Collins and Company.
Q. Where are your offices located?

1187 A. 175 West Jackson.

Q. Will you explain to us how a general agent in the insurance business operates with reference to brokers, please?

A. A broker receives an order for insurance, and he places it with general agencies like myself, who in turn place the business with an insurance company.

Q. Do you know Joseph Imburgio Bulger?

A. Yes, sir.

Q. Was Mr. Bulger at any time a broker who placed business through your company?

A. Yes, sir.

Q. Did Mr. Bulger ever place business concerning the residence of Paul and Nancy DeLucia through your company?

A. Not on the residence.

Q. On what?

A. On contents of the residence.

Q. What policies did he place with your firm?

A. Two policies.

Q. Do you have a record of those policies?

A. Yes, sir.

1188 Q. With you?

A. Yes, sir.

Q. May we see them, please?

A. Yes.

Q. Referring to your records, can you tell us when the first policy was written?

A. According to a copy of the invoice, rather a copy of a cash ticket, a policy, two of them, were written in 1945.

Q. Each in the amount of how much?

A. Each in the amount of $5,000 of insurance.

Q. And the type of insurance was what, household contents?

A. Fire and extended coverage on household and personal effects.

Q. Where they written for a five year term?

A. Yes, sir.

Q. What was the premium of the five year term?

A. $152.

Q. That is the two policies together?

A. Yes, sir.
Q. Were those policies ever renewed?
A. They were renewed in 1950.
Q. The same coverage, same amounts?
1189 A. Same coverage and same terms.
Q. Same premium?
A. Yes, sir.
Q. What date in 1950?
A. They were renewed as of April of 1950.
Q. For another five year term?
A. Yes.

By Mr. Barnett: I will ask the reporter to mark these documents as Government Exhibit 188 for identification and Government Exhibit 189 for identification.

(Thereupon said documents were marked Government Exhibits Nos. 188 and 189, respectively, for identification.)

By Mr. Barnett:
Q. I hand you what has been marked Government Exhibits 188 and 189, Mr. Wolf. Will you tell us what those documents are?
A. They are what we call cash tickets or records of payment of premium to our office.
Q. They are your records?
A. Yes, sir.
Q. Made in the ordinary course of business?
1190 A. Yes, sir.
Q. Is it your custom to keep such records?
A. Yes, sir.

By Mr. Barnett: Your Honor, I will offer Government Exhibits 188 and 189 in evidence.
By Mr. Stewart: No objection.
Same ruling, your Honor?
By the Court: You have no photostatic copies?

By Mr. Barnett: I haven't got photostatic copies, but I would like permission to make them and return these documents to the witness.

By the Court: You may substitute the photostatic copies.

Same ruling.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 188 and 189.)

By Mr. Barnett: Thank you, your Honor.

By Mr. Stewart: No cross examination.

1191 By Mr. Barnett: You may step down.

(Witness excused.)

By Mr. Barnett: Your Honor, I have a stipulation which I would like to read to the jury.

1192 Stipulation No. 41:

It is further agreed between the parties hereto:

That Fred Nevorowsky, 175 West Jackson Boulevard, Chicago, Illinois, issued and received payments on insurance policies as follows:

Date, December 29, 1947, annual total $733.28. Payments received $733.28, by cash.

June 10, 1948, annual total, $163.99. Payment received, $168.99, payment by check.

January 31, 1949, annual total, $681.58. Payment received, $109.75 by check. Payment received on 2-2-49, $489.23, by cash.

Payment received on April 8, 1949, in the amount of $82.60, by check.

The next item, April 1, 1950, annual total, $694.77.

Payment received as follows: $248.09 on April 1, 1950; $272.15 by check on March 9, 1950. $4.86 on June 2, 1950

by money order and $169.67 on September 1, 1950, 1193 by check.

Details of these expenditures are contained in Government's Exhibit No. 179, which I move to be offered in evidence, your Honor.

By the Court: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 179.)

By Mr. Barnett: Your Honor, I would like to read another stipulation.

Stipulation No. 42.

It is further stipulated and agreed by and between the parties:—subject to verification of the figures by Mr. Stewart—

That Paul DeLucia received the following sums of money from the World Amusement Corporation and/or Abraham Teitelbaum of said corporation during the period 1938 through 1941 and that said funds were available to him for expenditure purposes as follows:

1938, $203.00; 1939, $400.00; 1941, $3,000.00.

1194 Your Honor, I would like to read Government's Exhibit No. 151, which was a statement of Mrs. Nancy DeLucia which we got into evidence at the close of the court on Thursday last.

The head of this document reads:

"On 9 June 1945 at 10:30 a. m., Mrs. Nancy DeLucia together with her attorney Eugene Bernstein, appeared in Room One, U. S. Court House, Chicago, Illinois, and conferred with Assistant Chief Field Deputy John G. Maloney, in the presence of Eleanor Bredis, stenographer.

"The following is a transcript of questions put by Mr. Maloney to Nancy DeLucia and the answers made by by her.

1195 "Question: What is your name?

"Answer: Nancy DeLucia.

"Question: Where do you live?

"Answer: At 812 North Lathrop, River Forest, Illinois.

"Question: What is your home telephone number?

"Answer: Forest 2105.

"Question: Are you married?

"Answer: Yes, sir.

"Question: To whom?

"Answer: To whom—to Paul DeLucia.

"Question: Do you have a bank account?

"Answer: Yes, sir.

"Question: With what bank?

"Answer: At the Northern Trust.

"Question: Here in Chicago?

"Answer: Yes, sir.

"Question: Is that a checking account or a savings account?

"Answer: Checking.

"Question: What is the approximate balance in the account?

1196 "Answer: A little over $200.00.

"Question: Do you have any other bank accounts?

"Answer: No, sir.

"Question: Do you have any other bank accounts—" Pardon me. Correction.

"Question: Have you had any other bank accounts since March 1, 1945?

"Answer: No, sir.

"Question: Do you have a safe deposit box?

"Answer: Yes, sir.

"Question: Where is that safe deposit box located?

"Answer: First National Bank.

"Question: Of Chicago?

"Answer: Of Chicago.

"Question: The box at the First National Bank, is that in your name?

"Answer: At least the box is one to which both my husband and myself have access.

"Question: Referring to the bank account at the
1197 Northern Trust Company, is that account in your name only or is that a joint account?

"Answer: It is the same as the First National Bank.

"Question: Do you have any other safe deposit boxes?

"Answer: No, sir.

"Question: Have you had any other safe deposit boxes other than the one at the First National Bank since March 1, 1945?

"Answer: No, sir.

"Question: Who owns the bank balance at the Northern Trust Company in the checking account?

"Answer: Whose money is it? Well, its been there quite a while.

"Question: Does it belong to you or to your husband?

"Answer: To the both of us.

"Question: What are the contents of the safe deposit box at the First National Bank?

1198 "Answer: Just home deeds and papers that are necessary.

"Question: Are there any securities in that box, such as stocks and bonds?

"Answer: No, sir.

"Question: Are there any insurance policies in the box?

"Answer: No, sir.

"Question: Are there any insurance policies on your life?

"Answer: Yes.

"Question: How many are there?

"Answer: There are two policies.

"Question: What companies?

"Answer: Its a small company.

"Question: Issued both of the policies?

"Answer: That's right.

"Question: How much are those policies for?

"Answer: A few thousand.

"Question: Each policy might be over a few thousand?

"Answer: That's right.

1199 "Question: Do you know whether these two policies on your life have any cash surrender or loan value?

"Answer: They are just life policies—in case of death.

"Question: You pay regular premiums as long as you live?

"Answer: That's right.

"Question: Do you know whether you could loan any money on these policies?

"Answer: No, sir, I don't know.

"Question: You don't know whether you could surrender these policies for cash?

"Answer: I don't know.

"Question: You don't recall the names of the companies?

"Answer: No, they're Italian companies or society.

"Question: How much cash do you have at the present time?

"Answer: A few hundred dollars.

1200 "Question: Can you give an approximate figure as to the number of hundreds?

"Answer: Several hundreds—about $600.00.

"Question: Do you own any stocks or bonds at the present time?

"Answer: None that I am aware of.

"Question: Have you owned any stocks or bonds since March 1, 1945?

"Answer: None that I am aware of.

"Question: Between March 1, 1945 and today, June 9, 1945, how many times have you visited your safe deposit box at the First National Bank, Chicago?

"Answer: I don't remember.

"Question: Could you approximate the number of visits?

"Answer: I have been there quite a while ago.

"Question: Have you visited since March 1, 1945?

"Answer: No, I have not.

"Question: The sum of approximately $600.00 in cash represents all the cash that you have at the present time?

1201 "Answer: Yes, sir.

"Question: Since March 1, 1945, have you delivered any cash or other property to any other person or firm to hold for you?

"Answer: No, sir.

"Question: Referring to the property located at 812 North Lathrop Avenue, River Forest, Illinois, will you describe the kind of a piece of property that it is?

"Answer: A residence—brick—nine rooms.

"Question: You say there is nine rooms at the River Forest home?

"Answer: Well, I think so, about eight rooms.

"Question: These rooms are furnished?

"Answer: That's right.

"Question: What would you say that the furniture cost?

"Answer: Well, I've been married eighteen years and during that time I have bought furniture. Some furniture is 15 or 16 years old, worth about $5,000.00.

1202 "Question: Who was the furniture purchased by?

"Answer: By my husband.

"Question: Paid for by him?

"Answer: As far as I know.

"Question: Do you have any income at the present time?

"Answer: No, sir.

"Question: You are not employed?

"Answer: No.

"Question: Do you have any business of your own?

"Answer: Never had.

"Question: You have no income in the form of interest or dividends?

"Answer: No, sir, not that I know of.

"Question: Again referring to the River Forest home, do you know in whose name the title of that property is?

"Answer: In both of our names.

"Question: Do you know what the county records would disclose?

"Answer: In both our names.

"Question: Who told you that it was held in both your names?

1203 "Answer: Because both of our names appeared on some papers that I had to sign.

"Question: When you say 'papers' do you refer to the deed?

"Answer: Yes.

"Question: Mr. Bernstein, your attorney, states that the River Forest home was purchased in October, 1938?

"Answer: That's correct.

"Question: The price was approximately $25,000.00?

"Answer: That's correct.

"Question: That on July 25, 1939, a mortgage was placed on the River Forest home in the amount of $30,000.00?

"Answer: That's right.

"Question: And Mr. Bernstein further states that the mortgage was and is held by a man by the name of Steve Matlone?

"Answer: That's right.

"Question: Do you know where Steve Matlone is located?

"Answer: He is the head of the Chicago Macaroni Company.

1204 "Question: Your attorney, Mr. Bernstein, also said that the $30,000 mortgage was due in August, 1944?

"Answer: That I don't know.

"Question: Was anything paid on this mortgage?

"Answer: I don't know.

"Question: Have you been served with any notice that foreclosure proceedings have been instituted by Steve Matlone?

"Answer: No, not so far.

"Question: Referring to the purchase price of the River Forest property which was brought at a cost of $25,000, whose money was used to make that purchase?

"Answer: It was not mine.

"Question: Do you know whose money it was?

"Answer: I assume that it was my husband's, Paul DeLucia.

"Question: Who resides at your home?

1205 "Answer: At my home I have three children, Marie, age 17, Tony, age 16, and Paul, Jr., age 7.

"Question: Are all of the children attending school during the school year?

"Answer: Yes.

"Question: Have guardians at any time been appointed for the children?

"Answer: No.

"Question: Do you have an interest in the farm located in La Porte County, Indiana?

"Answer: I have an interest in the country home located at Long Beach, La Porte, Indiana.

"Question: How large of a place is that?

"Answer: It now contains about 13 lots. 8 being purchased in 1933 from Mrs. Busse (widow of the former mayor of Chicago) and 5 lots across the road were subsequently purchased at a cost that I have been told was $1500.00.

"Question: What was the original cost of the 8 lots that were bought in 1933 from Mrs. Busse?

1206 "Answer: I am told that it was about $14,000.

"Question: Is there any mortgage on this property at the present time.

"Answer: There may be a balance due on the mortgage the amount of which is unknown by me.

"Question: Was there a mortgage on the property when you acquired it during the year 1933 at Long Beach, Indiana?

"Answer: I understand there was. That the mortgage was held by the Great Lakes Mortgage Company, located in the Gary State Bank Building.

"Question: How is the Long Beach, Indiana, property improved?

"Answer: There was a main house which was destroyed by fire, there is a small cottage which is known as a caretakers house having five rooms and there is a small part of the main house that was not destroyed by the fire.

"Question: Is the caretakers house furnished?

1207 "Answer: Yes, it is furnished just with the odds and ends.

"Question: Do you have any idea as to the value of the furniture in the caretakers house?

"Answer: Not over $70.00—about $75.00.

"Question: How is the title to the Long Beach, Indiana, country home held?

"Answer: Its all in my name only. That's my opinion, as fare as I know.

"Question: As far as you know; has it been only in your name since it was bought?

"Answer: Yes.

"Question: Whose money was used to purchase the Long Beach, Indiana, home?

"Answer: It was not mine.

"Question: Whose money was it?

"Answer: I assume it mas my husband's, Paul DeLucia.

"Question: Do you have any idea as to what the approximate market value of this property at the present time?

1208 "Answer: I have no idea.

"Question: Do you believe that it's worth between $50,000 to $60,000?

"Answer: I would not know.

1209 "Question: At any time during the past have you placed this property with a real estate broker for sale?

"Answer: Not that I know of.

"Question: Do you know whether your husband Paul DeLucia has ever placed this property for sale?

"Answer: Not that I know of.

"Question: Do you know how much the latest tax bill is?

"Answer: I can't remember.

"Question: Do you remember the amount of any tax bill during the past two years?

"Answer: No.

"Question: Have you ever made payment of the tax yourself?

"Answer: Yes.

"Question: Do you recall how much tax you paid for in that year?

"Answer: I paid one tax. I cannot recall.

"Question: Do you have an interest in the farm of 1100 acres located in Kendall County, Indiana?

"Answer: Yes.

1210 "Question: Do you know who holds title to that particular farm at this time?

"Answer: My husband and I.

"Question: Do you know if it is in joint tenancy?

"Answer: I believe that it is.

"Question: Do you know when this property was acquired?

"Answer: About three or four years ago.

"Question: How much did the property cost?

"Answer: I understand about $130,000.

"Question: What amount of cash was paid at the time of purchase?

"Answer: About $35,000.00 cash and the balance by mortgage—about $95,000.00.

"Question: Who holds the mortgage at the present time?

"Answer: I think its an insurance company.

"Question: Do you know the name of this company?

"Answer: I am not sure, it might be Prudential.

1211 "Question: What is the unpaid balance of the mortgage at the present time?

"Answer: I believe it would be about $60,000.

"Question: How is the farm improved?

"Answer: Well, there is a tool shed, a farm house, a corn crib and one or two barns.

"Question: How many rooms in the farm house?

"Answer: About six or seven.

"Question: Are the rooms furnished?

"Answer: Yes.

"Question: What would you say would be the approximate value of the furniture at the present time?

"Answer: My husband bought it. I don't know, it was just ordinary furniture.

"Question: What construction is the farm house?

"Answer: All frame.

"Question: The tool shed, corn crib and the barns are also frame?

"Answer: I think so.

1212 "Question: Do you operate this farm?

"Answer: No.

"Question: Does your husband operate this farm?

"Answer: No.

"Question: Who does operate it at the present time?

"Answer: A tenant by the name of Francis Curry.

"Question: What transaction, if any, was entered into with Mr. Curry relating to the farm?

"Answer: I am not sure except I understand that he operates the farm and pays the maintenance cost and the tax and insurance and additional sums to apply on the principal payments on the mortgage.

"Question: How long has Mr. Curry so operated the farm?

"Answer: For a few years.

"Question: Are there any cattle on the farm?

"Answer: Yes. I understand that the cattle belongs to Francis Curry.

1213 "Question: The cattle do not belong to you?

"Answer: No.

"Question: Did you receive any income from Francis Curry during the year 1944?

"Answer: No, sir.

"Question: Do you know whether he paid your husband any moneys during the year 1944 from the profits of the farm?

"Answer: I don't know.

"Question: Do you have any idea what the farm value of the Kendall County, farm is at the present time?

"Answer: No.

"Question: Are there any other assets or income which you have an interest other than the ones I have questioned you about today?

"Answer: No, sir, not that I know of.

"Question: You understand that you have been assessed as a transferee of the assets of your husband, Paul DeLucia, in connection with income tax for the years 1933, 1936, 1937, 1938, 1940 and 1941 in the amount of $183,883.55?

"Answer: That I understand, that I have been
1214 assessed.

"Question: Is your husband Paul DeLucia insured?

"Answer: No, not that I know of.

"Question: Does anyone owe you money?

"Answer: Not that I know of.

"Question: Do you have an automobile?

"Answer: Yes, sir.

"Question: What kind of a car is it?

"Answer: A Cadillac.

"Question: What model?

"Answer: A coupe 1940 model.

1215 "Question: Is this car in your name?

"Answer: Yes, sir.

"Question: Was it purchased by you?

"Answer: No, sir.

"Question: Who purchased the car?

"Answer: My husband.

"Question: Was the car new at the time it was purchased?

"Answer: I don't know.

"Question: Do you have any idea as to the value of this Cadillac coupe at the present time?

"Answer: I wouldn't know.

"Question: No outstanding mortgage?

"Answer: No.

"Question: And the title is in your name only?

"Answer: Yes, sir.

"Question: Do you have any other automobiles?

"Answer: No, sir.

"Question: Whose money was used to purchase 1216 the car you now have?

"Answer: My husband's, I think.

"Question: Are there any judgments outstanding against you at the present time of which you have knowledge?

"Answer: I don't know.

"Question: Did you file an income tax return for the year 1944?

"Answer: Never filed.

"Question: Did you have any income during the year 1944 that would necessitate the filing of an income tax return?

"Answer: No, not that I know of.

"Question: Have you disposed of any of your assets by sale or by transfer or by giving them away except by selling them for their full value since January 1, 1934?

"Answer: No.

"Question: You did not transfer any assets of substantial value to any one person or firm to hold for you?

"Answer: No.

"Question: You did not sell any assets other than 1217 for their full value?

"Answer: I have sold nothing.

"Question: Do you have any interest that you know of in any trust or estate?

"Answer: No.

"Question: Referring again to the Kendall County, Indiana, farm as far as you know, have foreclosure proceedings been instituted for the amount of the balance due on the mortgage?

"Answer: There is not.

"Question: Is the mortgage due on the Kendall County farm?

"Answer: I don't know.

"Mr. Maloney requested Nancy DeLucia to raise her right hand.

"Mr. Maloney: Do you solemnly swear that all the answers made by you to the questions relating to your financial condition are true to the best of your knowledge and belief?

"(Mrs. Nancy DeLucia raising her right hand.) That's right."

1218-1253 • • •

1254 Chicago, Illinois,
Monday, May 19, 1958,
2:00 o'clock p. m.

1255 • • • By Mr. Barnett: Your Honor, if counsel doesn't object I would like to withdraw Mr. Mahon for about five minutes. I have another witness who is a short witness that I would like to put on.

By the Court: All right.

By Mr. Barnett: Mr. Rutledge.

HAROLD W. RUTLEDGE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

Q. Will you state your full name, please.

A. Harold W. Rutledge, R-u-t-l-e-d-g-e.

By Mr. Gorman: Would you speak up just a little bit, please?

By the Witness: R-u-t-l-e-d-g-e.

1256 By Mr. Barnett:

Q. Where do you live, Mr. Rutledge?

A. Evanston, 562 Sheridan Square.

Q. What is your business or profession?

A. The adjustment of fire losses.

Q. Are you associated with a firm?

A. Yes, sir, the Western Adjustment & Inspection Company.

Q. Where is that firm located?

A. In Chicago, our head office.

Q. 175 West Jackson Boulevard?

A. That's right, sir.

Q. How are you associated with the firm? What is your position with them?

A. I am corporate secretary.

Q. How long have you been with that firm?

A. 35 years.

Q. And have you acted as an adjuster yourself with that firm?

A. Yes, sir.

Q. What is the function of a fire adjustment firm?

A. Our function is the adjustment of fire losses as they occur, for stock insurance companies. We are owned by that.

1257 Q. And, in the course of such adjustments, what do you do?

A. Well, when the losses occur, we make an inspection of the loss and it is our duty to assist the insured or work with the figures on the claim to arrive at the proper settlement.

Q. During the year 1943, were you associated with the Western Adjustment & Inspection Company?

A. I was.

Q. And while so associated, did you have occasion to inspect a fire loss at the residence of Paul DeLucia at Long Beach, Indiana?

A. Yes, sir.

Q. Did you make that inspection in the year 1943?

A. As I recall, yes, sir.

Q. And was it shortly after the fire occurred?

A. It would be, yes.

1258 Q. Would you describe for us what you found on the inspection of the premises?

A. Well, I found that the fire was quite extensive. As I recall, it had started on the first floor and had communicated to the second, by way of smoke, heat and water, and so forth.

The furnishings in the home were also quite severely damaged.

Q. Approximately what percentage of the house was destroyed by fire?

A. Approximately, oh, a third, I would say.

Q. And approximately what percentage of the personal possessions in the house were destroyed by fire?

A. That is difficult to assess, because of the heat factor there. There is a difference between destruction and damage, if you understand me.

Q. I see.

What percentage of damage was there?

A. I would say very seriously damaged.

Q. Did you meet anybody on the premises when you were inspecting the damage at the house?

1259 A. Mr. DeLucia was there and I believe his attorney.

Q. Do you recall his name?

A. Mr. Bulger, I think, although that is—

Q. And did you discuss the loss and the settlement with Mr. DeLucia and Mr. Bulger?

A. Only to the extent—

By Mr. Green: I will object. He didn't even say Mr. Bulger was there, your Honor.

By the Court: Yes, he did.

By the Witness:

A. (Continuing) Only to the extent of instructions as to the preparation of the claim on the building and on the contents.

By Mr. Barnett:

Q. I see.

By Mr. Barnett: I have no further questions of this witness, your Honor.

By Mr. Stewart: We don't have any.

By Mr. Green: None.

By Mr. Barnett: You may step down.

By the Court: All right.

Thank you very much.

1260-1475 * * *

1476 * * * (Said documents, so offered and received in evidence were marked Defendants' Exhibits A-1 and A-2.)

(Witness excused.)

By Mr. Barnett: Your Honor, at this time I would like to offer in evidence what has been marked Government's Exhibits 185, 186 and 187, which are duplicate original signed copies of powers of attorney running

from Paul DeLucia to Eugene Bernstein, one each for the years 1948, 1949 and 1950.

By Mr. Stewart: No objection.

By the Court: They may be received in evidence.

(Said documents, so offered and received in evidence were marked Government's Exhibits 185, 186 and 187.)

1477 By Mr. Barnett: Now, your Honor, I have the District Court Clerk's file, that is, the District Court Clerk for the Northern District of Illinois, the Eastern Division, in the case of United States of America ex rel Paul DeLucia, Petitioners v. Thomas P. O'Donovan, Marshal, Respondent, No. 48 C 867.

I would like to offer one document from this file in evidence and I assume there is no objection to my not producing the Clerk of the Court with respect to the file.

By Mr. Stewart: That is true. I think your Honor can take judicial notice of it. It is in this court.

May I see the document?

By Mr. Barnett: May I have it marked? I can withdraw from the file a document entitled "Traverse." Will you mark this document, please, Government's Exhibit No. 200 for identification?

(Thereupon said document was marked Government's Exhibit 200 for identification.)

1478 By Mr. Stewart: For what purpose?

Well, I tried to get Mr. Barnett to tell me his purpose but I wish your Honor would reserve the ruling so we could find out what the purpose is. This is in some other litigation and there may be some matters here which are not germane to the case.

By the Court: I would like to know the purpose in order to pass upon the admissibility.

1479 By Mr. Barnett: This document, your Honor, is executed by Mr. Paul DeLucia in pen and ink and

contains what we consider to be admissions which have a direct bearing upon the issues in the case on trial.

By the Court: I will reserve the ruling. I will let you examine it.

By Mr. Green: There will be an objection on behalf of Mr. Bulger.

By the Court: It may be admitted, subject to your objection, if you renew it.

By Mr. Stewart: I drew it. I have no objection except we are getting off on another case, that's all.

By the Court: It is only for impeachment purposes here. You are not going to get into any other case. Unless it has impeachment value, it shouldn't be admissible.

By Mr. Stewart: And it would be rather difficult to understand any one part of it.

What does Mr. Barnett propose to do, read the 1480 entire thing?

By Mr. Barnett: No. I propose to read certain selected portions of it, your Honor.

By the Court: I will reserve my ruling. I will let you look at it.

By Mr. Barnett: I would like to read it now, the portions that I want.

By Mr. Green: Your Honor, so far as the defendant Bulger is concerned—

By the Court: The same ruling.

By Mr. Green: No. Our point is this is, at best, a declaration of an alleged co-conspirator made prior to the date alleged in the indictment as being the foundation which gave the conspiracy, it is clearly inadmissible, so far as the defendant Bulger.

By the Court: It is not admissible as to the defendant Bulger, and we will so direct the jury—that he must connect it up.

By Mr. Green: Thank you, sir.

1481 (Said document, so offered and received in evidence was marked Government Exhibit No. 200.)

By Mr. Barnett: I am reading from a marked copy, your Honor, a printed copy.

By Mr. Stewart: I have no objection to that.

By Mr. Barnett: The facing page of this document, a copy of which I am reading, and the original of the exhibit, being Government Exhibit No. 200, reads as follows:

"In the District Court of the United States, For the Northern District of Illinois, Eastern Division.

"United States of America, ex rel, Paul DeLucia, Petitioners, versus Thomas P. O'Donovan, Marshal, Respondent, No. 48 C 867.

"Before the Honorable Michael L. Igoe, District Judge.

"TRAVERSE."

That is the name of the document.

1482 "Now comes Paul DeLucia and for his answer to the return of the Marshal herein states that the said return is insufficient in law, his imprisonment illegal, and that he is entitled to his immediate discharge from custody."

And now skip to page 2 of the printed copy and read as follows:

Your petitioner submits herewith and makes a part of this traverse the printed report of the Congressional Committee, being House Report No. 2441, 80th Congress, Second Session,"

I now skip to page 4 of the printed copy of the exhibit, Government's Exhibit No. 200 and read:

"The transcript of the Congressional hearings, also submitted herewith and made a part hereof, will

demonstrate a deliberate smear campaign carried on by certain Congressmen."

• • •

1483-1495 • • •

1496 • • • By Mr. Barnett: Your Honor, I will offer into evidence that portion of Government Exhibit No. 201 which contains the testimony of Mr. Paul DeLucia.

By Mr. Stewart: Will your Honor reserve your ruling? There are a great many things in here that have nothing to do with this case, and we might be able to agree.

By Mr. Barnett: I don't intend to read it now, your Honor.

By the Court: I will exclude anything that has nothing to do with this case, so I needn't reserve it. I will admit that part of it that pertains to this case.

By Mr. Stewart: Mr. Barnett informs us he doesn't intend to read it now anyway, so it doesn't have to come up at this time.

By Mr. Barnett: I take it there is no objection
1497 to the competency of it?

By Mr. Stewart: No.

By the Court: All right, it may be received.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 201.)

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1498-1568 • • •

1569 • • • LEWIS PENNISH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

1570 *Direct Examination by Mr. Barnett.*

Q. Will you tell us your full name, please?

A. Lewis E. Pennish.

Q. Where do you live, Mr. Pennish?

A. Beverly Hills, California.

Q. What is your occupation?

A. Presently I am in the motion picture business.

Q. How long have you been so engaged?

A. About 15 years.

Q. Prior to that, what was your occupation?

A. I practiced—I was a practicing attorney here in Chicago.

Q. Did you specialize in any particular type of legal practice?

A. Quite a great deal of receiverships, reorganizations and bankruptcy.

Q. Were you associated with a law firm?

A. I was.

Q. What was the name of the firm?

A. Pennish and Rashbaum.

Q. Where was your firm located in Chicago? Where did it have offices?

1571 A. The Westminster Building. We were there about 25 years. That is 7 South Dearborn Street.

Q. During the year 1935, did you have anything to do with the bankruptcy of the Italian Village?

A. I did.

Q. How were you connected with that?

A. Judge Holly oppointed me counsel for Edwin D. Buell, who was the Trustee in Bankruptcy.

Q. Did you cause an audit to be made of the Italian Village books?

A. As much as was possible.

Q. Do you recall what the audit showed?

A. Yes. It was in the nature of an investigation, to find out the registration of assets.

Q. To find out what?

A. To discover assets.

Q. Did you conduct proceedings, that is, in the way of hearings, in order to determine such assets?

A. I did.

1572 Q. During the course of those proceedings, did you interrogate Mr. Joseph Imburgio?

A. I did. He was the president of the Italian Village.

Q. Do you recall who the other officers of the Italian Village Corporation were?

A. The principal officer and moving spirit was Imburgio, and the secretary and one of the directors was Libonati. I think his first name is Ellinor?

Q. Elliodor.

A. Elliodor, that is right. That is right.

Q. Libonati?

A. Libonati.

Q. Do you see Joseph Imburgio in the court room?

A. If I do, I wouldn't recognize him. It is so many years ago.

By the Defendant Bulger: I will stand up.

By the Witness: Now I kind of refresh my recollection.

By Mr. Barnett:

Q. Do you recognize Mr. Bulger?

A. Yes. He still looks very young.

1573 Q. Mr. Pennish, before whom did you interrogate Mr. Imburgio, now known as Mr. Bulger?

A. It was before the Referee in Bankruptcy, who was Archie Cohen.

Q. That was in Bankruptcy Court, was it?

A. Bankruptcy Court.

Q. Were the proceeedings reported by a stenographer, a court stenographer?

A. Yes, they were.

Q. Was a transcript furnished to you?

A. That is right, there was.

Q. I hand you what has been marked Government's Exhibit No. 129, and ask you if this is the transcript of those proceedings?

A. This is the transcript.

Q. Is there contained within that transcript a record of your interrogation of witnesses, other than Mr. Joseph Imburgio?

A. Yes. I examined Mr. Libonati.

Q. But does it contain your examination of Mr. Imburgio also?

A. Oh, yes, principally Mr. Imburgio.

Q. Have you had an opportunity to review that transcript?

1574 A. I have, this morning.

Q. Did you review it after you had received it from the court reporter back in 1935?

A. Oh, yes.

Q. Does it truly and accurately portray the questions propounded by you and the answers given by Mr. Imburgio at that time?

A. It does.

By Mr. Barnett: Your Honor, I will offer Government's Exhibit No. 129, the transcript just referred to, in so far as it contains the interrogation of Mr. Joseph Imburgio.

By Mr. Green: Your Honor, I don't know what this transcript may show.

By the Court: I will reserve my ruling and give you a chance to examine it.

By Mr. Green: Examine this witness or speak to this record? I can speak to this record right now, your Honor. I am at a loss to understand how a bankruptcy proceeding twenty-four years ago would have any pro-
1575 bative value whatsoever in the charge now at bar. I think we have gone far enough afield.

By the Court: There has been some testimony about Mr. DeLucia's capital investment. I don't know what it reflects, but if it reflects something of that nature, it may have a bearing on this case.

1576 By Mr. Green: I would like to examine it.

By the Court: Is that right, Mr. Barnett?

By Mr. Barnett: That is right, your Honor.

May I give you a photostatic copy of that?

By Mr. Green: Yes.

By Mr. Stewart: Your Honor, there is no cross examination. Will your Honor reserve the ruling until we have a chance to see what is in there?

By the Court: There will be no cross examination?

By Mr. Green: No cross examination, no.

By the Court: I will reserve my ruling.

By Mr. Barnett: May I have Mr. Pennish read certain portions of that transcript?

By the Court: Yes.

By Mr. Green: We object to that, your Honor, until we speak to the exhibit.

By the Court: Then you may cross examine on
1577 what he is reading. I don't think he can come back from California to read it.

By Mr. Stewart: Mr. Barnett can read it as well as the witness, and we are not going to question anything the witness has said.

By the Court: There is no question as to its authenticity. I will reserve my ruling, and wish you well going back to California.

By Mr. Green: There is a further ground to the objection to this, your Honor, and that is that this constitutes an effort by the Government to impeach its own witness, Mr. Garden, the man who came to this stand and testified that it was Mr. DeLucia who paid $180,000 in thousand dollar bills, I believe his testimony was, at the time the Italian Village was erected.

By the Court: Can't you reserve that until the final argument?

By Mr. Green: I am making this as a formal objection to your Honor.

1578 According to the transcript of the testimony, it is apparent that Mr. Bulger was there examined subsequent to the bankruptcy of the Italian Village, and Mr. Bulger stated and exhibited, apparently, these checks by which the Italian Village construction was paid for, and that the loss on the Italian Village was principally that of Mr. Bulger's.

Now, because the Government was dissatisfied with $180,000, which was put in the hands of Mr. DeLucia at a time when their proof shows that he was penniless, they seek to impeach him by means of this document.

We will object to such impeachment.

By the Court: The objection will be overruled. That is, on that objection. I am still reserving my ruling on the other.

By Mr. Green: I understand.

* * *

1579-1584 * * *

1585 * * * Chicago, Illinois,
Wednesday, May 21, 1958,
10:00 o'clock a. m.

* * *

And thereupon the following further proceedings were had in open court, out of the hearing and presence of the jury:—

1586 By the Clerk: No. 57 CR 154, United States of America v. Paul DeLucia and Joseph I. Bulger, the case on trial.

By Mr. Barnett: Ready, your Honor.

By the Court: Bring out the jury.

(Whereupon the following further proceedings were held in open court, in the hearing and presence of the jury:)

By the Court: Good morning, ladies and gentlemen.

By Mr. Barnett: Your Honor, the record is not entirely clear with respect to exhibits which have been offered and received.

At one point in the trial I offered Mr. Ruggaber's report, which is Government's Exhibit No. 55, and then on objection I withdrew it. Then subsequently Mr. Stewart stated that he preferred to have it in. It was my intention to reoffer it, but it doesn't show in the record, and I would like at this time to reoffer it.

1587 By the Court: If there is no objection, it may be received in evidence.

By Mr. Stewart: No objection.

By Mr. Green: The general objection.

By the Court: Yes, the same objection on behalf of Bulger.

(Said document, so offered and received in evidence, was marked Government's Exhibit 55.)

By Mr. Barnett: Yesterday while Mr. Joseph King was on the stand, I offered a series of exhibits which were documents in his file, and counsel objected that he had testified fully to the matter, and your Honor sustained the objection, and I withdrew all the exhibits except Government's Exhibit 196, which was the transcript.

By the Court: Because he testified, and those were his own notes.

By Mr. Barnett: Exactly, your Honor.

I would like to reoffer Government's Exhibit 195, which is the conference memorandum of November 15, 1954,

which has attached to it copies of the schedules
1588 which were submitted by Mr. Bernstein at that time.

By Mr. Stewart: I think he is entitled to those schedules. I don't know about the report.

By the Court: It may be received. If it is merely repetitious, it can't do any harm.

(Said document, so offered and received in evidence, was marked Government's Exhibit 195.)

1589 By Mr. Barnett: When Mr. Mahon was on the stand, I neglected to make an offer of Government Exhibit 181, which was the computation of possible cash on hand. I would like to offer that at this time, your Honor. Though we treated it as though it had been received in evidence, as we continued discussing the matter, but I never formally offered it.

By the Court: That was referred to?

By Mr. Barnett: Yes. He was cross examined on it.

By the Court: It may be received in evidence subject to the same objection for Mr. Bulger.

(Said document, so offered and received in evidence, was marked Government Exhibit 181.)

By Mr. Barnett: In addition to that exhibit, your Honor, I offered, while Mr. Mahon was on the stand, sub-summary exhibits, 161, 162, 163, 164, 165, 166, 167, 168,
169, 170, 171, 172, 173, 174, 175, 176, 177, 180, 182,
1590 184, all of which exhibits were identified by the defendants.

They were offered in evidence and there was later discussion on them, but your Honor's ruling was reserved pending cross examination of the witness, and after the cross examination I never reoffered the exhibits.

I reoffer them at this time, your Honor.

By Mr. Stewart: It is part of the testimony, your Honor.

By the Court: They may be received in evidence. Same objection on behalf of Mr. Bulger.

(Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits Nos. 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 180, 182, and 184.)

1591 JOSEPH J. BUTLER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

* * *

1592-1595 * * *

1596 By Mr. Barnett:

Q. You have two documents before you, Judge. I don't know who to call "Judge."

By the Court: Call him "Judge." He is a real judge.

By the Witness: Thank you, Judge.

By Mr. Barnett:

Q. Will you identify them for us, please, by exhibit number?

A. Exhibit number, Government Exhibit No. 88-A, professes to be a document, a photostatic copy, I believe, of the mortgage I have just discussed.

Q. I see.

A. Dated in July of 1948.

Q. And that is exhibit number what?

A. That is exhibit number, Government Exhibit No. 88-A.

Q. And what is the other document?

A. That is Government Exhibit No. 88-B and that is the release of the mortgage.

Do you want me to tell you how it was released?

1597 Q. If you will, please.

A. I suppose I shouldn't be volunteering information.

By the Court: He said you may, if you please.

By the Witness:

A. Oh, I see.

In 1955—that was the last I heard about that mortgage until—no, that is the wrong year—1951.

A lawyer came into my office, exhibited to me as trustee of that particular note, that particular trust deed, the paid note marked "canceled," at which time I did the duty of a trustee, I released the trust deed, or the mortgage—it is the same thing—it is a little different but we will call it "mortgage," if it is all right with you.

I released the mortgage, as trustee, and I can see, I presume this is recorded. I don't see any marks on there of it being recorded—that wouldn't be up to me—that would be up to the person who owned the property, the other side of the case.

1598 By Mr. Barnett:

Q. Do you recall who the lawyer was that came to your office?

A. I believe his name was Bernstein. I am not going to swear to that. I have never seen him before or since.

Q. Do you know what Hugo Bennett's occupation was?

A. Auditor for Sportsman's Park Race Track, Cicero, Illinois. He was studying auditing when I met him in school.

Q. Subsequent to the middle of 1948, did you have anything to do with another mortgage on property of Paul DeLucia?

A. Yes. Mr. Bennett called me in—I think it was May of 1949, now, or May of 1950. I am not sure. Perhaps you can refresh my memory.

• • •

1599-1604 • • •

1605 • • • (Said documents, so offered and received in evidence, were marked, respectively, Government Exhibits 89-A and 89-B and 188-A and 188-B.)

• • •

1606-1614 • • •

1615 • • • GEORGE E. GROTHE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination By Mr. Barnett.

Q. Will you tell us your full name, please?

A. George E. Grothe, G-r-o-t-h-e.

Q. Where do you live, Mr. Grothe?

A. 5801 North Mason Avenue, Chicago.

Q. What is your occupation?

A. I am an auditor and custodian of the records of the First National Bank of Chicago.

Q. And have you been subpoenaed to bring with you certain records this morning?

A. I have.

Q. Have you brought with you a record of the savings account No. 589169?

1616 A. Yes, I have.

Q. What documents have you brought concerning that account?

A. I have the signature card and the ledger card.

Q. And in whose name is the account?

A. Paul DeLucia.

Q. What type of an account is it?

A. A savings account.

Q. I hand you Government Exhibit No. 205. Is that a true and correct photostatic copy of the ledger account and the signature card?

A. Yes, it is.

Q. Do you have a record of an account No. 38467?

A. I have a record of that account which is—that number was used in the former State Bank. Our number is 86596.

Q. Do you have the signature card and the ledger sheet?

A. Yes, I do.

Q. Is Government Exhibit No. 206 a true and correct photostatic copy of the ledger sheet and signature
1617 card?

A. Yes, it is.

Q. Do you have a record of a safety deposit box No. 9390?

A. Yes, I do.

Q. And in whose name is that box?

A. Mrs. Nancy DeLucia.

Q. What record do you have of that box?

A. I have a record of the rentals and the signature card.

Q. And is Government Exhibit No. 207 a photostatic copy of the card indicating the rentals, and the signature card?

A. Yes, they are.

Q. Do you have a record of a box No. 746 of Nancy DeLucia? In the name of Nancy DeLucia?

A. Yes, I do.

Q. What record do you have of that?

A. I have a record of the rental card and the signature card.

Q. And is Government Exhibit No. 208 the photostatic copy of those documents?

A. Yes, they are.

1618 Q. Do you have a record of a box No. 38070 in the name of Mrs. Nancy or Paul DeLucia?

A. Yes, I do.

Q. And what record do you have of that box?

A. A record of the rentals and the signature card.

Q. Is Government Exhibit No. 209 photostatic copies of those documents?

A. Yes, they are.

Q. Are the originals of these records kept by your bank in the usual and ordinary course of its business?

A. Yes, they are.

Q. And is it your custom to keep such records?

A. Yes.

Q. With reference to the account No. 598169, that is in the name of Paul DeLucia, is it?

A. Yes, it is.

Q. What is the address shown on that account?

A. 917 Blue Island Avenue.

Q. When was that account opened?

A. September the 8th of 1927.

Q. September 8, 1927?

A. That is correct.

Q. And how much was deposited in the account at its opening?

A. $750.00.

Q. How long did it remain open?

A. The account is still open.

Q. What type of account is it?

A. It is a savings account.

Q. What is the largest amount of money in the balance in the account?

A. $4500.00.

Q. On what date?

A. November the 2nd of 1927.

Q. That is the greatest amount in the account?

A. Yes, it is.

Q. What is the 1934 year end balance?

1620 A. $45.85.

Q. What is the 1943 year end balance?

A. $47.58.

Q. What is the 1947 year end balance?

A. $50.30.

Q. Now, will you turn to your record of the account which is now No. 860596.

In whose name is that account?

A. Mrs. Nancy DeLucia.

Q. And what address is shown for the account?

A. 4312 West 22nd Street.

Q. What is the date the account was opened?

A. May 21, 1931.

Q. Nineteen what?

A. 1931.

1621 Q. How long did the account remain open?

A. The account is still open?

Q. What type of account is it?

A. Savings account.

Q. What was the opening deposit?

A. $12.36.

Q. What was the year end balance for 1934?

A. $1.04.

Q. What was the year end balance for 1943?

A. $1.11.

Q. What was the year end balance for 1947?

A. $1.17.

Q. Turning to your record of the safety deposit box No. 9390.

In whose name was that box carried?

A. Mrs. Nancy DeLucia.

Q. When was the box opened?

A. June 16, 1931.

Q. What was the rental fee of the box?

A. $5.00.

Q. That is the annual rental fee?

A. It was increased to $6.00 in the following years.

Q. Can you tell us the size of that box?

1622 A. I don't know the dimensions.

Q. The approximate dimensions?

A. Probably the standard length. I know it would be the standard length, but it would probably be about maybe an inch deep or so.

Q. An inch deep?

A. And probably four inches wide, four and a half, something like that.

Q. Was that box subsequently closed?

A. This box was closed out September 12, 1935.

Q. What happened to the box on September 12, 1935?

A. It was transferred.

Q. Is that 1935 or 1945?

A. 1935.

Q. What happened after that?

A. It was transferred to a larger box.

Q. Was that box No. 746?

A. 746.

Q. What was the rental on the second box?

A. $10.00.

Q. What is the approximate size of such box?

A. I wouldn't know offhand.

Q. Larger than the $5.00 box?

A. Yes, it is larger.

1623 Q. Who were the authorized persons who could enter that vault?

A. Nancy DeLucia owned the box at one time singly, and then on January 13, 1936, Paul DeLucia's signature was attached and had authority to enter.

Q. How long did that box remain open?

A. It closed May 7, 1936.

Q. What happened on that occasion?
A. It was transferred to a larger box.
Q. What was the date?
A. $14.00. On May 7, 1936.
Q. What was the rental fee on the new box?
A. $14.00.
Q. Is that box No. 38070?
A. Yes, it is.
Q. Is this still a larger box than the one before?
A. Yes, it is.
Q. Who were the authorized entrants to that box?
A. Paul DeLucia and Mrs. Nancy DeLucia.
Q. How long did the box remain open?
A. It is still open.
Q. That is to say, they still hold that box?
A. Yes, they do.

By Mr. Barnett: Your Honor, I would like to
1624 offer in evidence Government's Exhibits 205, 206, 207, 208 and 209.

By Mr. Stewart: No objection and no cross.

By the Court: They may be received in evidence, subject to the same objection by Bulger.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 205, 206, 207, 208 and 209.)

By Mr. Barnett: That is all.

(Witness excused.)

1625 HARRY RUSSELL WINKLEBLACK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

• • •

1626-1639 • • •

1640 Q. Was there anything said about why these men were visiting him?

A. Other than the fact that there was some difference of opinion in the way Mr. Ricca's interests were being handled.

By Mr. Barnett: No further questions.

By Mr. Stewart: You have had a lot of trouble with the law, haven't you?

By the Witness: Yes, sir.

By Mr. Stewart: I won't make any more trouble for you. Come on. That's all.

(Witness excused.)

1641 By Mr. Barnett: Your Honor, I have the transcript of the bankruptcy testimony of Mr. Joseph Bulger, Government Exhibit No. 129, the foundation for which was laid by the attorney, Mr. Pennish, yesterday. I would like at this time to read from this document.

By Mr. Green: If the Court please, there has been a formal objection made. I read it last night. I fail to see where it has anything to do with this case.

By the Court: Does it pertain to the financial structure of the company and its ultimate bankruptcy?

By Mr. Barnett: Yes, sir, it certainly does, and pertains to the entire—

By the Court: You may read it. Objection overruled.

By Mr. Barnett: The certificate on the facing page of this transcript reads:

"United States of America
"Northern District of Illinois
"In the District Court of the United States
1642 "For the Northern District of Illinois
"Eastern Division at Chicago.
"In the Matter of Italian Village, Inc., Bankrupt.

"No. 57216.

"Certificate of Evidence

"The following is a stenographic transcript of proceedings had and evidence introduced in the above entitled cause, before the Honorable Archie H. Cohen, Referee in Bankruptcy, at his courtroom, suite 1801, 7 South Dearborn Street, Chicago, Illinois, at the hour of eleven-thirty o'clock A.M. February 1, 1935, pursuant to order of reference heretofore duly entered herein, and due notice given.

"Appearances:

"Messrs. Pennish & Rashbaum

"(By Mr. Lewis E. Pennish),

"Appearing on behalf of the trustee in bankruptcy.

1643 "Mr. Joseph Rosenberg

and

"Mr. Alfred E. Roth,

"Appearing on behalf of creditors.

"Mr. Elliodor M. Libonati,

"Appearing on behalf of the bankrupt."

Page 4 of the transcript:

"JOSEPH IMBURGIO was called as a witness by the trustee, and being first duly sworn, testified as follows:

"Direct Examination by Mr. Pennish,

Q. Will you state your name, please?
A. Joseph Imburgio.
Q. And where do you live, Mr. Imburgio?
A. 1103 Broadway, Melrose Park, Illinois.
Q. What is your business?
A. Real estate and insurance.
Q. Were you associated with the Italian Village?

A. Yes, sir.

1644 Q. That was an exhibit at A Century of Progress, is that correct?

A. Yes, sir.

Q. Was that a corporation?

A. Yes, sir.

Q. What was it? An Illinois corporation?

A. An Illinois corporation, yes, sir.

Q. When was it organized, do you know?

A. It was organized sometime in the latter part of January or the early part of February.

Q. What year?

A. 1933.

Mr. Rosenberg: 1933 or 1934?

The Witness: 1934.

Mr. Pennish: Q. This exhibit was not in existence during the 1933 Fair, was it?

A. No, sir.

Q. Now, who were the people that organized this corporation besides yourself?

A. Mr. E. M. Libonati, Alderman William V. Pacelli, Senator Daniel A. Serritella and Mr. Hugh M. Garden, of Garden, Erikson & Schmidt.

Q. Anybody else?

A. That is about all.

Mr. Rosenberg: Including yourself?

1645 The Witness: Yes, and myself.

Mr. Pennish: Q. What was the total authorized capital stock of that corporation?

A. $5,000.00.

Mr. Rosenberg: All the records are here, are they not?

Mr. Pennish: No, they are not here.

Mr. Rosenberg: The total authorized was twenty, and five was issued.

The Witness: Yes, $20,000.00.

Mr. Pennish: Q. $20,000.00 authorized capital stock?

A. That is right.

Q. And $5,000.00 was issued?

A. Yes.

Q. Was that all the issued stock?

A. Yes, sir.

Q. That is all the money that was put in as subscription for stock, is that right?

A. $5,000.00, yes, sir.

Q. Now, who was the principal moving person in this undertaking? Who was it? You?

A. No. Mr. Garden.

Q. Is he the architect?

A. He is the architect, yes.

1646 Q. Who contributed this $5,000.00 of this authorized capital stock?

A. There was myself, Mr. Libonati, Mr. Pacelli, Mr. Serritella and Dr. Plagono.

1647 Q. Who was the attorney for this company?

A. Mr. Libonati, the secretary.

Q. Now, do you know how much money was expended, about how much money was expended in the construction of that village?

A. Yes, approximately.

Q. How much was it?

A. $180,000.

Q. These men that you mentioned here, including yourself, were they all directors of the company?

A. No, there were just three directors.

Q. Who were the directors?

A. Myself, Mr. Libonati and Alderman Pacelli.

Q. This $180,000, that represented money paid to various contractors?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. At the present time how much does this company owe?

A. About $120,000.

Q. $120,000?

A. About that, yes, sir.

Q. Is that part of the $180,000?

1648 A. No. $180,000 is expended for construction. $120,000 represents loans made to the corporation.

Q. In other words, the contractors that had put up this venture, they were all paid up?

A. Practically.

Q. They were practically all paid up?

A. Practically all paid up, except about $30,000.

Q. All paid up except $30,000?

A. Yes, sir.

Q. So of this $120,000, about $30,000 is represented by these contractors?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And the remaining $90,000, how is that divided?

A. By two loans made to the corporation.

Q. Which loans are those?

A. They represent $45,000 that I loaned to the company and $45,000 Mr. Edward J. O'Hare loaned to the company.

Q. $45,000?

A. Yes, sir.

Q. Who is Mr. Edward J. O'Hare?

1649 A. A friend of mine.

"The Court: Is he the orchestra leader?

"The Witness: No.

"Mr. Pennish: Q. Tell me more about him, will you, please?

A. Mr. O'Hare is president of the Sportsman's Park Jockey Club, and he is also president of the Miami Beach Kennel Club, and he is also president of the Wilson Avenue Building Corporation.

Q. Is he the vice-president of anything that you know of?

A. No, sir.

"Mr. Rosenberg: He is a breeder of horses and dogs.

"Mr. Pennish: Q. What is his address here in Chicago? Is Chicago his home?

A. Yes.

Q. Do you know where he lives?

A. No, I don't know where he lives. He stays over at the Illinois Athletic Association when he is in Chicago.

Q. Now, this $45,000 that you advanced, did you advance it at one time?

A. Yes.

Q. All at one time?

1650 A. Well, in amounts ranging from $6,500 up to $17,000.

Q. Well, then you advanced it on various occasions?

A. Yes, all within a short period.

Q. Do you recall on what dates these advancements were made?

A. No, the records would show.

* * *

1651-1653 * * *

1654 * * * By Mr. Bulger: Do you want to read from your own photostatic copy? You might as well read the whole thing to the jury.

By Mr. Barnett: All right. I will read it. I am on page 13. The last question was:

1655 "Q. Was he a director of this company?

A. No, sir.

Mr. Rosenberg: Neither was he a stockholder.

Mr. Pennish: Or was he a stockholder?

A. No.

1656-1657 * * *

1658 * * * Q. Did you borrow any of this forty-five thousand dollars from others that you advanced to this corporation?

A. No, sir.

Q. You were a man of means, were you?

A. Yes, sir.

Q. And you are a man of means?

A. Yes, sir.

Q. And those were your own funds?

A. Yes, sir, they were my own funds.

Q. Where did that money come from? From what particular bank?

1659 A. I didn't have a bank account. I had my money in a box.

Q. You had no bank account at all?

A. Oh, yes, I had a bank account.

Q. What bank were you doing business with?

A. The Prairie State Bank and the Northern Trust Company.

Q. So you had two accounts?

A. Yes.

Q. But this $45,000.00 you say came from moneys in a box?

A. Yes, sir.

Q. All of it.

A. Most of it. I had my own checking account that ran, at times, as high as eight or nine thousand dollars.

Q. Where is your box located?

A. It is in the Prairie State Bank.

Q. Is it still there?

A. Yes, sir.

Q. You would go into the box and take out the cash, is that right?

A. Yes, sir.

Q. And advance it?

A. Yes, sir.

1660 Q. Do you know anything about these advancements made by Mr. O'Hare?

A. Only what he told me.

Q. Well, I mean did you handle the money?

A. Yes, I saw the money, sure.

Q. You say that he advanced this money at your request?

A. Yes, sir.

Q. Did he give you the money, Mr. Imburgio?

A. Yes, sir.

1661 Q. Was it a check?

A. No, sir. It was cash.

Q. It was always cash, is that correct?

A. Yes, sir.

Q. The whole $45,000?

A. The whole $45,000 was cash.

Q. Was it given to you for this company at one time?

A. Yes, sir.

Q. Where was the money given to you, at what particular place?

A. At the Prairie State Bank.

Q. Who was present?

A. Myself, the cashier, and there was another gentlemen there, I think, from the First National Bank.

Q. What cashier was that? Do you remember his name?

A. From the Prairie State Bank.

Q. Do you remember his name?

A. Yes. Mr. Fred Spring.

Q. Did Mr. O'Hare also have a vault box there?

A. I couldn't tell you. I don't know.

Q. You don't know that?

1662 A. No.

Q. You made an appointment to meet there, is that right?

A. Yes, sir.

Q. And he handed you the $45,000?

A. No. I got there late, and he left before I got there, but the man who had the money there was from the First National Bank, and he left it there with the cashier, and the cashier gave this gentleman a receipt, and when I came in this other gentleman was going out, and Mr. Spring told me the money was there, and he issued a receipt—I gave Mr. Spring a receipt for the money and I put it in the account.

"Mr. Rosenberg: Into what account?

"The Witness: Into the Italian Village account.

"Mr. Pennish: Q. Did the Italian Village have a bank account?

A. Yes, sir.

Q. Was that $45,000 deposited in the bank that the Italian Village was banking at?

A. Yes.

Q. What bank was that?

1663 A. The Prairie State Bank.

* * *

1664-1772 * * *

1773 * * * By Mr. Barnett: Your Honor, I would like to present now the testimony of Joseph Imburgio Bulger before the Federal grand jury on February 1, 1957.

Mr. Green has kindly consented to make the responses of Mr. Bulger while I read the questions. I think we will both save our voices a little bit that way.

By Mr. Green: This is at the request of the Government. We are not waiving any of our objections.

By the Court: All right.

By Mr. Barnett: I will read the facing page:

"Before the Federal Grand Jury, Friday, February 1, 1957, 10:30 o'clock a. m.

• • •

1774 • • • The responses will be responses of Mr. Bulger unless otherwise indicated.

"Q. Will you tell us your full name, please?

A. Joseph A. Imburgio Bulger."

• • •

"Q. Do you know Paul DeLucia?

A. Yes, sir, I do."

• • •

1775-1785 • • •

1786 • • • "Q. Now, on May 14, 1945, the fines were paid and they totaled $60,000.00, if you recall?

A. Yes.

Q. There were seven defendants and there was a $10,000.00 fine. Was there one defendant who was not fined?

A. Mr. Pierce was dismissed out of the case.

Q. Now what part did you play in obtaining the fine?

A. I collected whatever they gave me. Each defendant gave me the money.

1787 Q. $10,000.00?

A. Yes. Some gave me checks.

Q. What did DeLucia give you?

A. I think his wife gave me $10,000.00.

Q. In currency?

A. Yes.

Q. Did she give it to you in Chicago or New York?

A. I don't remember where I got it.

By Mr. Barnett: Page 36.

"Q. The reason why I ask that, is a preface as to what you did with the $10,000.00, did you convert it into a cashier's check or deposit it in your personal bank or how did you handle it?

A. I don't remember that. I don't remember just how it happened. I think either Mrs. DeLucia or—yes, she gave me the $10,000.00. Yes.

Q. In Chicago?

A. In Chicago.

Q. What did you do with it then?

A. I kept it, put it in an envelope. I put it in my box. When I got to New York I also got $10,000.00 from Mrs. Campagna.

Q. In currency?

A. Yes.

Q. You say you put it in your box when you got it?

1788 A. Yes.

Q. How did you go about paying the fine money with it.

A. I went up to the Clerk's office.

Q. Did you carry the $20,000.00 in person—$20,000.00 in currency on your person in an envelope?

A. Yes.

Q. You paid it at the Clerk's office?

A. Yes, sir.

Q. Do you recall whether Nancy DeLucia brought the money to your office in Chicago?

A. No. I think maybe Mr. DeLucia gave it to me. I don't remember exactly.

Q. Mrs. DeLucia did not give you the money then?

A. I don't remember exactly, Mr. Barnett. Frankly, I don't remember.

Q. Did you get the money all in one lump sum, $60,000.00?

A. $60,000.00?

Q. Yes.

A. No, I got $10,000.00 from Mr. DeLucia, $10,000.00 from Mr. Campagna, $10,000.00 from Mr. Maritote. I got $10,000.00 from Mr. D'Andrea.

Q. Was it all given to you in currency?

A. Well, I know Mr. DeLucia and Mr. Campagna
1789 gave it to me in cash but the others, I don't remember.

Q. Do you now recall whether it was Nancy DeLucia or Paul Delucia that gave you the $10,000.00?

A. No, I don't recall. I don't remember."

1790-1791 * * *

1792 * * * Q. DeLucia gave you $10,000 in currency in December, 1943, is that right?

A. Yes.

Q. In Chicago?

A. Yes.

Q. In your office?

A. I don't remember whether it was in my office or in his home. I don't remember exactly. It was somewhere around in that period of time.

1793-1804 * * * *

1805 * * * "Q. And now, were you in close contact with Paul DeLucia during the Christmas holidays of 1943, is that correct?

A. I wouldn't say 'close contact.' We came back
1806 right after the trial.

Q. Well, do you know about $300,000.00 that he had stashed in the house?

A. Yes, sir.

Q. Will you tell us that story?

A. Well, that's just before we left—have you got my statement there? Can I read it from that?

Q. I would like to have you tell the grand jury your statement.

A. They will cite me for perjury if I make a mistake here and there. Well, I'll give you the gist.

* * *

1807-1821 * * *

1822 "Q. Well, after the money was recounted in 1947, did you tell anybody about it after that?

A. No, sir, except I told this Mr. King at this hearing.

Q. Had you told anybody about it before you told Mr. King?

A. No, sir.

Q. You must have told somebody about it before you told Mr. King.

A. Oh, Mr. Bernstein and Mrs. DeLucia was asking me about it and said—

Q. Mr. Bernstein and Mr. DeLucia?

A. No, Mr. DeLucia would ask if I would tell about this money to Mr. Bernstein.

Q. When did he ask you that?

A. I don't know. It was sometime after he got his money.

Q. Sometime after he got his money?

A. Yes.

Q. Sometime after you counted it in 1947?

A. Yes.

Q. Well, when was it?

A. Oh, I don't remember when he told me.

Q. You don't remember when he told you that?

1823 A. I don't remember when he told Mr. Bernstein.

Q. When did he ask you to relate the story to Mr. Bernstein?

A. A few days before we had this—

Q. In 1954?

A. Yes.

Q. Well, did Bernstein question you about the story?

A. No, he didn't.

Q. Never asked you about it?

A. He never called me.

Q. Didn't he ever say to you, 'Paul DeLucia was with you when he counted $300,000?' Didn't he ever say that to you?

A. No. Funny thing is, we never discussed it.

Q. 'We,' who?

A. Mr. Bernstein.

Q. Yes.

A. Except when it came up on this hearing. I don't remember whether it was three days or a week before, I said, 'I don't like to'—'I don't like to appear. If you can avoid it, I would appreciate it.'

Q. Now, the hearing you are referring to is the—

1824 A. One before Mr. King.

Q. In November, 1954?

A. That's right. Wait, wait. There was one other time that we talked about the $300,000 with Mr. DeLucia. That was when he was going to appear before the Kefauver Committee.

Q. Who discussed it with him at that time?

A. Well, he was on parole then and we talked about it.

Q. 'We,' who?

A. Mr. DeLucia and I.

Q. Yes.

A. I said, 'Well, you better tell the truth.' I said, 'You better tell them that you have that money.' And I think he did. That was in '48, wasn't it?

Q. No, that would be in 1950, I would think, the Kefauver hearing.

A. Kefauver hearing, 1950—

Q. Did you discuss it with Bernstein at that time?

A. No, I don't think I did. I don't remember discussing it with him.

Q. Did you testify before the Kefauver Committee?

1825 A. No, sir.

Q. Well, did Bernstein ask you to tell him the story?

A. I don't remember whether I told him the story or not. I think Mr. DeLucia told him the story.

Q. You think Mrs. DeLucia told him?

A. No, Mr. I don't remember whether we did or not. We talked about it, but I don't remember just when it was.

Q. How long before your conference with Mr. King did you discuss it with him?

A. Well, we talked, I think it was one or two days before that.

Q. Is that the first conversation you had with him about it?

A. No, we had other conversations, but I don't know when they were.

Q. With Bernstein about the $300,000?

A. Yes.

Q. You don't remember when they were?

A. No.

Q. When was the first time?

A. I don't remember the first time.

1826 Q. You knew that Bernstein was interested in this matter from the standpoint of DeLucia's income tax liability, did you not?

A. No, I didn't know what he wanted to know. I knew afterwards.

1827 Q. After when?

A. After I went to the hearing, that there was some question about his income tax.

Q. Before the hearing you didn't know a thing about it?

A. I knew he was having this, this—that the Government was investigating his income tax.

Q. From whom did you know it?

A. I knew it because I read it in the newspapers and your agents have been in my office asking me about it.

Q. When were the agents in your office asking you about it?

A. Not about the $300,000.00.

Q. Well, about his tax matters?

A. I don't remember now, but they have been there on and off for the past few years.

* * *

1828-1830 * * *

1831 * * * "Q. How does it happen that you didn't tell Mrs. DeLucia about the $300,000.00?

A. Well, he didn't want her to know.

Q. Why?

A. Well, she was sickly and very emotional. And he didn't want her to know.

Q. What money did she have to live on while he was in prison?

A. That I don't know."

1832 By Mr. Barnett: Skip to page 96.

"Q. What was the purpose of you holding the key to the $300,000.00?

A. Well, I don't know. You have to ask him. I don't know what his purpose was. I guess he thought I would take good care of it.

1833 "Q. What kind of care did you take of it?

A. Not a thing. I just put it in that place up there in the attic and completely forgot about it. Once in a while when I went home, I would go by there.

Q. To see if the house was still standing?

You never went in to look at the house, though?

A. No, I was only in Mr. DeLucia's house after he went to jail, three times.

Q. Suppose Mr. DeLucia had died in prison, what were you going to do about the $300,000 then?

A. I would have taken it and thrown it into the probate court.

Q. How would you have gotten it?

A. I would have gotten it out of that hole.

Q. You would have to tell Mrs. DeLucia?

A Yes.

Q. Did Mr. DeLucia swear you to secrecy at that time?

A. No, we didn't have to swear about secrecy.

Q. By that, did he ask you not to tell anybody about it?

1834 A. Why certainly. He said, 'I don't want my wife to know about it. She might divorce me while I'm in jail.'

Q. Because of it? Did he say he didn't want anybody else to know about it?

A. We didn't discuss whether anybody else knew anything about it. I understood that I was the only one that was supposed to know about it. Now whether he told anybody else, I don't know.

Q. Did you understand that you were not supposed to tell anybody else, other than his wife, too?

A. As far as I am concerned.

Q. As I understand this conversation, he told you specifically not to tell his wife?

A. He didn't want his wife and anybody else to know of it.

Q. Did he tell you that?

A. Yes.

Q. Did he tell you, 'I don't want anybody to know about this money?'

A. That's right.

• • •

1835 • • •

1836 • • • Q. What means did you take to protect the $300,000 against fire or robbery or anything else?

A. None at all. Just a chance.

Q. If DeLucia died in jail, you would be the only one that knew about the $300,000?

A. I think so, unless he told somebody else himself.

Q. When was the last time you were in DeLucia's house?

A. You mean this particular house?

Q. Yes. Where was this house, by the way?

A. 812 Lathrop Avenue.

Q. In River Forest?

A. When he sold it, I was there.

Q. When did he sell it?

A. I think he sold it in 1955.

Q. He sold it after you had testified before Mr. King?

A. Yes. Yes, he sold it afterwards.

• • •

1837-1852 • • •

1853 • • • Q. Mr. Bulger, were you interested in a res-
1854 taurant called the Italian Village in the year 1934?

A. I can't answer directly. I can answer this way, that I was president of a corporation that built a village, Italian Village at the Worlds Fair.

Q. And that was in '34?

A. Among the other concessions, among some concessions, a restaurant was in it, that is correct.

1855 Q. Who were the other officers?

A. Mr. Leadora"—

By Mr. Green: According to the record.

"Libonati, he was the secretary; and Alderman William V. Pacelli, I think he was the treasurer; and Mr. Daniel A. Serritella, I think he was the vice president; and I was the president.

Q. And that takes care of all the officers?

A. Yes, sir.

Q. Were all of those officers, including yourself, stockholders?

A. Yes. There was one other stockholder in the corporation, and I think his name was either Ragano or Tigano. I am not sure of that.

Q. Does that take care of all of the stockholders?

A. Yes, sir.

Q. How—did some people who were not stockholders have money invested in the corporation; did they lend money to the corporation, outsiders?

A. Yes, sir; yes, sir.

Q. Do you know who they were?

A. Well, I was one of them, and Mr. Edward O'Hare was another one.

1856 Q. Who was Mr. Edward O'Hare?"

By Mr. Green: I don't think our transcript agrees there.

By Mr. Barnett: I just want the answer to that one question.

By Mr. Green: I don't have that on my transcript, sir.

By Mr. Barnett: This is what I want. Just this answer.

By Mr. Green: Oh, yes, this part. Certainly.

"A. I believe at that time he was—he was either president or had something to do with the race tracks, and dog tracks.

Q. And were you using the name Joseph Imburgio at that time?

A. Yes, sir.

Q. When did you change your name, in 1938, was it?

A. No, in 1935.

Q. Right after this?

A. I think it was a year after the Fair closed.

1857 Q. Did this corporation wind up in bankruptcy after that?

A. Well, it went into bankruptcy in September of 1934."

• • •

1858-1865 • • •

1866 • • • Q. Did you have any discussion with DeLucia about the $300,000 between 1947, when you gave him back the key, and 1950, before he appeared in the Kefauver Committee?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Did he call you up on the phone and ask you if he could come and see you at your office in connection with this matter in 1950?

A. I don't remember whether he called me or not, Mr. Barnett.

Q. Was the conversation in your office?

A. I think it was; yes, sir.

Q. Now then, when was the next conversation, if any, you had with Paul DeLucia about the $300,000 after September of 1950?

A. You mean after the hearing, before the Kefauver Committee?

Q. Yes, sir.

A. I don't believe I talked to him about it.

1867 Q. Ever again?

A. No, sir.

Q. And you haven't yet, to this day?

A. Oh, yes, I have talked to him about it since; yes, sir.

Q. When was the next time you talked to him about it after September of 1950?

A. He came to me.

Q. When?

A. I don't remember just when it was. It was sometime in '50. When was this hearing, in '54?

Q. Yes, '54.

A. I think it was November, wasn't it?

Q. There were—when you are referring to this hearing, are you referring to the time when you came in to give the statement?

A. Yes.

Q. Yes. That was on November 19, 1954.

A. Yes. It was some time before that, when he came to me, and asked me if I would go over and see Mr. Bernstein, and relate the story that—about this money. And then I went to see Mr. Bernstein.

Q. DeLucia came to you and said, would you go to Bernstein and relate this story about the money?

1868 A. Yes, sir.

Q. Did DeLucia go with you to see Bernstein?

A. No, I don't think he did. I think I went there alone.

Q. And then when did you see DeLucia next again, after that?

A. I don't remember just when it was. It was some time after that.

Q. How long after you went to see Bernstein was it that you appeared and testified before Mr. King?

A. It may have been a week; it may have been two. It may have been, because a few days—I don't recall the exact time.

1869 "Q. Were you aware of the fact that Mr. DeLucia, a Mr. Scott Stewart, Mr. Eugene Bernstein, had had a conference in the Intelligence Division of the Bureau of Internal Revenue in September of 1954?

A. No, sir.

Q. Didn't DeLucia tell you about that?

A. No, sir. He didn't mention it to me. I don't recall him ever telling me.

Q. Did Bernstein tell you about it?

A. No, sir, I don't believe he did, either.

Q. So, at any rate, a short period before November 19, 1954, you went to Bernstein to his office, did you?

A. Yes, sir.

Q. And you related to him the story about the $300,000?

A. Yes, sir.

Q. Was there anybody else present?

A. No, sir.

Q. And then when you left Bernstein, what arrangements did you have with him to meet him again?

A. Well, then I think he asked me to go over to the Internal Revenue Bureau.

1870 Q. They, who?

A. Mr. Bernstein and Mr. DeLucia.

Q. Did you see DeLucia again?

A. I saw him just before we went over to the hearing, yes.

Q. On the day of the hearing?

A. No. I think it was the day before the hearing.

Q. Tell us about that; where did you meet?

A. He asked me—first, I didn't want to go. I told him that I didn't want to get mixed up in this thing anymore.

Q. Wait a minute now. DeLucia called you and asked you to go and relate the matter to Mr. Bernstein and you did that?

A. Yes.

Q. Did you have any arrangement to meet with Bernstein again after you left his office on that occasion?

A. No.

Q. Then how did you get together again; did you receive a phone call or bump into somebody, or how?

A. I think Mr. DeLucia came to my office after the conference, that I had with Mr. Bernstein. I told
1871 him that I did not want to go unless it was necessary.

Q. I see.

A. And I said, if it is necessary, if I must go, I will go, but if it isn't necessary, please don't let me go.

Q. This is all on the occasion when you related the matter to Bernstein?

A. Yes.

Q. He told you he wanted you to go into the Bureau?

A. No. He didn't say that. He thought I ought to relate that story to the Internal Revenue Bureau.

Q. And you said, 'I would like to get out of it,' if you can?

A. Yes.

Q. You left Bernstein?

A. Yes.

Q. Next thing you saw DeLucia in your office?

A. Yes, sir.

Q. That was the day before you went to the Bureau?

A. Yes, sir.

Q. That would then be November 18, 1954?

A. It would be about that time.

Q. Well, the appearance was on November 19.

1872 A. Well, it would be about the day before, yes, sir.

Q. And who came to your office with DeLucia, if anybody?

A. Nobody, just DeLucia.

Q. Was it in the morning or afternoon?

A. I think it was in the afternoon.

Q. What was the conversation?

A. Well, he said that he thought that they would have to use my testimony there. He would appreciate it if I would go over there.

Q. What did you say?

A. I said, all right, then I will call Mr. Bernstein, and see what he says. Then I called Mr. Bernstein.

Q. While DeLucia was present?

A. I don't remember whether he was there or not. But I did call Mr. Bernstein, either that day or the next morning, and I told him that if it was necessary for me to go over there, that I would go. And he said, 'Well, all right.'

So, we went over there.

1873 Q. Hadn't Mr. Bernstein already made an appointment to appear there?

A. I think he had an appointment; yes, sir.

* * *

1874 * * *

1875 * * * MATTHEW E. SZWED, recalled as a witness on behalf of the Government, having been previously duly sworn and examined, testified further as follows:

Direct Examination by Mr. Barnett.

* * *

1876-1877 * * *

1878 * * * Q. Now, when you were on the stand last, there was one item I neglected to cover with you. Did you search the records of the District Director of Internal Revenue to find whether a return had been filed in the name of Nancy DeLucia for the calendar year 1934?

A. Yes, I did, sir.

Q. Was there any such record?

A. No record, sir.

* * *

1879-1884 * * *

1885 * * * LAWRENCE J. MILLER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

* * *

1886-1889 * * *

1890 * * * By Mr. Stewart: Your Honor, I have glanced through these exhibits and I have been furnished a copy. Exhibit 214 consists of some grand jury testimony taken on November 20, 1947.

1891 Exhibit No. 215 is a transcript of DeLucia's testimony on January 13, 1948.

Exhibit 216 is a certified copy of the Kefauver Committee hearings.

Now I will say to the Court that in the limited time I have noted Mr. Barnett's markings, and I didn't take time to read the rest. It seems to be along the line that Mr. Barnett is pursuing and your Honor has overruled the objection. We make the same objection, that it is immaterial.

I haven't had time to read the Kefauver hearing where he has it marked, but I would like to have this understanding. Mr. Barnett might go ahead now, and then I will have these things and later on if we want to supply something which might explain, we might do it later during the Government's case.

By the Court: I will give you the opportunity.

1892 By Mr. Barnett: We will be very happy to handle it that way, your Honor.

1893 By the Court: All right.

By Mr. Barnett: I am proceeding, your Honor, to read from a copy of Government Exhibit No. 214, which is a transcript of proceedings before a Federal Grand Jury on November 29, 1947 in this building.

"PAUL De LUCIA, was thereupon called as a witness by the Grand Jury and, having been first duly sworn, was examined and testified as follows:

"Examination."

By Mr. Barnett: This examination was by Mr. Miller. I will recite the questions to Mr. Miller, and Mr. Miller, who is now on the stand, will give the answers which were given by Paul DeLucia.

By the Court: I am not sure that I want the witness to take part in the reading of testimony. I would rather have somebody else.

By Mr. Stewart: We have a better actor here, your Honor, Mr. Green.

By the Court: He is an expert. I don't want to
1894 affect credibility one way or the other, and I don't think it is proper for a witness to take part in the skit.

By Mr. Barnett: Mr. Green has a basso profundo voice anyway.

Mr. Miller then is excused.

By the Court: Thank you very much.

(Witness excused.)

By the Court: You couldn't give a witness an "Oscar," could you?

By Mr. Barnett: Do you have what has been marked before you, Mr. Green?

By Mr. Green: I have a marked one, yes.

By Mr. Barnett: Now I will ask the questions which were asked by Mr. Miller, and Mr. Green will give the responses of Mr. DeLucia.

* * *

1895-1913 * * *

1914 RICHARD L. O'HANLON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

• • •

1915-1916 • • •

1917 • • • By Mr. Barnett:

Q. Mr. O'Hanlon, I hand you what has been marked Government's Exhibit No. 217 for identification and ask you if that is a true and correct copy of the transcript of proceedings that occurred on that date.

A. It is.

Q. Were the questions asked put by you on that date?

A. They were.

Q. And by whom were the answers given?

A. By Mr. DeLucia.

Q. By who?

1918 A. Mr. DeLucia.

By Mr. Barnett: Your Honor, I will offer Government's Exhibit No. 217. I would like permission to read it to the jury.

By Mr. Green: The same objection with respect to the defendant Bulger.

By the Court: The same ruling.

By Mr. Stewart: It is along the same line as the grand jury testimony.

By the Court: The same ruling. It may be received in evidence.

(Said document, so offered and received in evidence, was marked Government's Exhibit 217.)

1919-1921 • • •

1922 • • • Q. Have you filed with the Collector of Internal Revenue Donee's or Trustee's Information Return of Gifts, Form 710?

A. No."

By Mr. Barnett: I propose to stop here, Mr. Stewart, unless you care to finish.

By Mr. Stewart: You might as well read it all.

1923 By Mr. Stewart: You might as well read it all.

By Mr. Barnett: All right.

"Q. Section 86.21, Regulations 108, relating to gift taxes under the Internal Revenue Code, states that an information return or notice on Form 710 must be filed by every donee of a gift in excess of $3,000.00 on or before the 15th day of March following the close of the calendar year in which the transfer was made. What is the reason for your not filing with the Collector of Internal Revenue Form 710 reporting the receipt of the money delivered to Mr. Bernstein for you; as gifts?

A. First of all I think I was still in jail; and second, I didn't consider it as a gift. I figured that some day I would have to pay it.

• • •

1924-1933 • • •

1934 By Mr. Barnett: Now we are at the point of Mr. Kefauver's hearing, your Honor. I have here a certified and exemplified copy of the hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, Second Session, and 82nd Congress, First Session.

This is Part 5 of the hearings conducted in Illinois on September 9; October 5, 6, 7, 17, 18, 19; December 18, 19, 20, 1950; January 5, 19, 1951.

This book has been marked Government Exhibit 216.

Your Honor, we offer in evidence certain portions of Mr. DeLucia's testimony before that Committee, which I would like permission to read now with Mr. Green.

• • •

1935 • • • Reading from the facing page, your Honor:

"Investigation of Organized Crime in Interstate Commerce.

"Saturday, September 9, 1950.

"United States Senate, Special Committee to Investigate Organized Crime in Interstate Commerce, Washington D.C.

"Executive Session.

"The Committee met, pursuant to call of the Chairman, at 10:00 a.m. in Room 457, Senate Office Building,
1936 Senator Estes Kefauver (Chairman) presiding.

"Present: Senators Kefauver, Wiley, and Hunt.

"Also Present: Rudolph Halley, Chief Counsel, and George Robinson, Associate Counsel."

I will take the parts of the questioners and Mr. Green will answer for Mr. DeLucia.

"The Chairman: The Committee will come to order.

"Do you solemnly swear that the testimony you are about to give this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?"

And Mr. DeLucia answers—"

By Mr. Green: I don't know what page you are on.

By Mr. Barnett: I am on the very first page.

By Mr. Green: Oh, yes.

"'Mr. DeLucia. Paul DeLucia."

By Mr. Barnett: I will read this. Mr. DeLucia answers: "'I do."

1937 "The Chairman: All right, Mr. Robinson, will you proceed?"

By Mr. Barnett: Then we commence:

"Testimony of Paul DeLucia, alias Ricca, River Forest, Illinois."

Do you find that?

By Mr. Green: Yes, I have that now.

"Mr. Robinson. Will you state your full name, please?

"'Mr. DeLucia. Paul DeLucia.

1938 "Mr. Robinson. Are you known by any other name?

Mr. DeLucia. Yes.

Mr. Robinson. What are the other names?

Mr. DeLucia. Ricca and Salvi.

Mr. Robinson. What is your present address?

Mr. DeLucia. River Forest, Illinois.

The Chairman. How many different names did you use?

Mr. DeLucia. I don't know. Any place I go I mention any name that comes to my mind.

Mr. Robinson. You were served with a subpoena on the 5th day of September to appear before the committee and produce certain records; is that correct?

Mr. DeLucia. Yes, sir.

Mr. Robinson. Do you have those records with you?

Mr. DeLucia. Yes, sir.

* * *

1939 * * * Mr. DeLucia. May I explain something? The subpoena was to bring the records for ten years. I only got the records from 1947. That is the day I came out from the penitentiary. Before that I was three years and eight months in the penitentiary, and during that time there was a tax settlement, so all the records I don't have any more. I can only give you the records since I came out.

Mr. Robinson. When did you go to the penitentiary?

Mr. DeLucia. 1944—the last day of 1943.

Mr. Robinson. When did you come out?

Mr. DeLucia. 1947.

Mr. Robinson. I understand these records which you are producing are only from the time that you came out of the penitentiary.

Mr. DeLucia. Yes; that is all I have.

Mr. Robinson. You have no records from 1940 until the time that you went into the penitentiary?

Mr. DeLucia. No; I filed my income tax regularly but I haven't got them.

Mr. Robinson. You have no cancelled checks for 1940 that period?

Mr. DeLucia. No; that is all gone.

Mr. Robinson. Did you have any cancelled checks?

Mr. De Lucia. Oh, sure.

Mr. Robinson. Where are they?

Mr. De Lucia. I don't know. When I come out, I was told by my lawyer that the old records were no good any more and they were all settled and I could do what I want.

Senator Wiley. Who told you that?

Mr. De Lucia. My lawyer.

Senator Wiley. Who is your lawyer?

Mr. De Lucia. Bernstein. The tax man told me the records were no good any more so I just got rid of them.

Senator Wiley. Give me the name of that lawyer.

Mr. De Lucia. Bernstein, Eugene Bernstein. He is a tax man. He is the fellow who took my income tax case with the Government.

Senator Wiley. Was he a Government man?

Mr. De Lucia. No; he was my lawyer.

Senator Wiley. Chicago?

Mr. De Lucia. Yes. I got those records from him when I came out.

Senator Wiley. Did you have any Kansas City lawyer?

1941 Mr. De Lucia. No.

Senator Wiley. No?

Mr. De Lucia. No.

Mr. Robinson. Did you destroy the records or did Mr. Bernstein?

Mr. De Lucia. I did. I got a room and got rid of them.

Mr. Robinson. When did you destroy them?

Mr. De Lucia. Shortly after I come out. Shortly after he gave them to me.

Mr. Robinson. Shortly after you came out?

Mr. De Lucia. Shortly after he give them to me.

Mr. Robinson. Can you fix the approximate time when you did destroy them, what year?

Mr. De Lucia. I think 1947, the latter part of 1947.

Mr. Robinson. You destroyed the records that you had from 1940 up until the time that you went to the penitentiary in 1947; is that right?

Mr. De Lucia. No. Let me explain this. Mr. Bernstein told me that my income tax case was cleared up to 1943. All my tax with the Government was settled up to 1943. That was the year I went to jail. After that I was three years and eight months in jail, and of course I had
1942 nothing to show, so when he gave me the records, he said, 'You can do as you want with the records, the records are worthless, the tax is settled,' and that is all.

Mr. Robinson. Did Mr. Bernstein tell you to destroy them?

Mr. De Lucia. No; he told me they are useless and do what you want.

Mr. Robinson. Let us get it clear. During the time from 1940 to the time you went to the penitentiary, was Mr. Bernstein preparing your income tax returns?

Mr. De Lucia. No; not from 1940.

Mr. Robinson. I am saying from 1940 until the time you went into the penitentiary.

Mr. De Lucia. No. He got my case when I was in jail.

Mr. Robinson. Who prepared your tax returns from 1940 to the time you went to jail?

Mr. De Lucia. Myself.

Mr. Robinson. You prepared them yourself?

Mr. De Lucia. Yes, sir.

Mr. Robinson. And you have no cancelled checks, no books showing receipts and expenditures for the period from 1940 until the time you went into the peni-
1943 tentiary?

Mr. De Lucia. Yes; that is right.

Mr. Robinson. You destroyed all of them?

Mr. De Lucia. Yes, sir.

1944 Mr. Robinson. Did you keep such books?

Mr. De Lucia. Yes, with the Northern Trust. I had a check book with Northern Trust. You know those records. After all, them days there was nothing for me to keep.

Mr. Robinson. Did you have a bank account at that time?

Mr. De Lucia. Yes; with the Northern Trust.

Mr. Robinson. Did you have bank statements?

Mr. De Lucia. Yes.

Mr. Robinson. Did you destroy all the bank statements?

Mr. De Lucia. Yes. The Northern Trust.

Mr. Robinson. Did you destroy all the copies of your tax returns for that period?

Mr. De Lucia. Whatever I got from him, I destroyed. It was all that he had. He had all the stuff to prepare my case with the Tax Court. So I got those records back and he said, 'Do what you want,' and I destroyed them.

Mr. Robinson. During that time that you were in the penitentiary, did somebody operate your business
1945 for you?

Mr. De Lucia. Yes.

Mr. Robinson. Who?

Mr. De Lucia. They did not operate it. I rent my farm to Francis Corri, and I got $7.00 an acre rent. That was filed.

Mr. Robinson. Who kept the books for you while you were in the penitentiary?

Mr. De Lucia. Bernstein.

Mr. Robinson. Where are the books that were kept at the time you were in the penitentiary?

Mr. De Lucia. Them three years went together with all the stuff he gave me. Naturally I got rid of all that.

Mr. Robinson. You destroyed all that at the time you came out of the penitentiary?

Mr. De Lucia. Yes; from the time I come out, there it is (indicating).

Mr. Robinson. Now, when Mr. Bernstein was preparing your tax returns, what information did you submit to him as the basis for preparing the returns?

Mr. De Lucia. It was very easy. The rent I was getting from the farm was so much. I think it was 1946 about six or seven thousand dollars a year.

The Chairman. How did you destroy the records? Did you throw them away or burn them?

Mr. De Lucia. I burned them. They were useless. I didn't know this was going to come up.

The Chairman. Did you burn them?

Mr. De Lucia. Yes; I burned them.

Mr. Robinson. Would you take these records and describe what each one is?

Mr. De Lucia. This is the book where all the people work, their security number, and all that.

The Chairman. Will you identify them as we go along for the record, so we can put them in as exhibits?

Mr. Robinson. Yes.

Mr. De Lucia. These are my income tax.

* * *

1947-1948 * * *

1949 Mr. Robinson. Do you have any books or records showing interest held in any property or any business other than the ones you have submitted?

Mr. De Lucia. No. I own no interests. I only own about 170 shares or 180 shares of Bank of America. I think that is in there, too. Those shares turn dividends, and that is coming in, and I turn that in. Anyway I have about 170 or 180 shares of Bank of America stock. That book does not show my house at River Forest and my house at Long Beach.

Mr. Robinson. You receive income from those properties?

Mr. De Lucia. No, sir.

• • •

1950-1957 • • •

1958 • • • Senator Wiley. How about cash? How much cash do you have?

Mr. De Lucia. How much cash I got. Do I have to tell you that, sir?

Mr. Halley: Yes.

Mr. De Lucia. I don't know. I think I got about close to $40,000.00.

Senator Wiley. In cash?

Mr. De Lucia. Yes.

Senator Wiley. Do you have any safety deposit boxes?

Mr. De Lucia. No; I got it in the room or some other place.

Senator Wiley. Where is it?

Mr. De Lucia. If I tell you, you can't get it out of there anyway.

1959 The Chairman. This is an executive session.

Mr. De Lucia. Do I have to tell it?

The Chairman. You have to tell it.

Mr. De Lucia. I got it home.

Senator Wiley. Do you have any safety deposit boxes in any banks?

Mr. De Lucia. Yes.

Senator Wiley. What bank?

Mr. De Lucia. First National Bank.

Senator Wiley. Any other bank?

Mr. De Lucia. No, sir.

Senator Wiley. First National Bank of Chicago?

Mr. De Lucia. Yes.

Mr. Halley. What do you keep in your safety deposit box?

Mr. De Lucia. All the documents and stuff.

Mr. Halley. Ahy cash?

Mr. De Lucia. I keep money there, too.

Mr. Halley. Do you have cash in there now, too?

Mr. De Lucia. Not now.

• • •

1960 • • • Senator Wiley. Does your wife have any stock in her name?

Mr. De Lucia. No.

Senator Wiley. Any property?

Mr. De Lucia. The house at River Forest and the house at Long Beach is in her name and the farm is in my name and her name.

1961 Senator Wiley. Does she have a safety deposit box?

Mr. De Lucia. No; we have a joint deposit box.

Senator Wiley. Have you given to her any other property except what you mentioned?

Mr. De Lucia. No, sir.

• • •

1962-1963 • • •

1964 • • • Chicago, Illinois,
Thursday, May 22, 1958,
2:00 o'clock p.m.

Court convened pursuant to recess.

• • •

1965 • • • By Mr. Green: That was page 10, wasn't it?

By Mr. Barnett: That is my recollection.

Starting with the very first question on page 10:

"Senator Wiley: How much are the premiums on your life insurance?

Mr. De Lucia. With the Northwest Wisconsin.

Senator Wiley. That is a good company.

Mr. De Lucia. I think I pay about $700.00 or $800.00 a year. It is a $20,000.00 policy. There are different ones —five, five and ten.

* * *

1966 * * * Senator Wiley. You had some money when you went to the penitentiary?

Mr. De Lucia. Yes.

Senator Wiley. How much did you have when you went to the penitentiary?

1967 Mr. De Lucia. $300,000.

Senator Wiley. Who paid the fine?

Mr. De Lucia. I don't know.

1968 Senator Wiley. There was $10,000 paid?

Mr. De Lucia. Yes, sir.

Senator Wiley. You never found out who paid it?

Mr. De Lucia. No, sir.

Senator Wiley. You have no suspicion?

Mr. De Lucia. No.

Senator Wiley. Who was your attorney in your parole case?

Mr. De Lucia. What do you mean?

Senator Wiley. When you came out of prison, you were paroled?

Mr. De Lucia. Yes.

Senator Wiley. You are out on parole now?

Mr. De Lucia. Yes.

Senator Wiley. You were not pardoned?

Mr. De Lucia. That is right.

Senator Wiley. Who was your attorney?

Mr. De Lucia. That story is well known. It is Mr. Dillon.

Senator Wiley. How much did you pay him?

Mr. De Lucia. After I came out, we paid him $10,000. Campagna paid him $5,000 and I paid $5,000.

Senator Wiley. And when you went in, you had
1969 $300,000 in cash?

Mr. De Lucia. Yes.

Senator Wiley. Where was that stored?

Mr. De Lucia. I put it away some place.

Senator Wiley. Where?

Mr. De Lucia. In my house.

Senator Wiley. Do you have special vaults in your house?

Mr. De Lucia. No.

Senator Wiley. How did you accumulate the $300,000?

Mr. De Lucia. Gambling.

Senator Wiley. Was it involved in relation to pressure put on the moving picture concerns?

Mr. De Lucia. No, I never got anything from the movie picture but jobs.

Senator Wiley. What kind of gambling was it?

Mr. De Lucia. Horses, dice, and all that.

Mr. Robinson. How much have you have in cash in your home at any one time?

Mr. De Lucia. Well, the most I had was $300,000.

Mr. Robinson. When did you have that, at the time you went into the penitentiary?

Mr. De Lucia. I had that mixed up. You see, I had some in the box and some at home. When I went
1970 away, I took it out of the box and I put it away.

Mr. Robinson. How much have you had in the safe deposit box in cash at any one time?

Mr. De Lucia. Oh, I had $100,000 sometimes.

Mr. Robinson. Never had any more than that?

Mr. De Lucia. Oh, maybe more. I don't recall those things. That's a long time ago.

1971 Mr. Robinson. How long ago?

Mr. De Lucia. That is around 1940 or 1941, something like that.

Mr. Robinson. Did you have a safe-deposit box during the 1930's?

Mr. De Lucia. I don't remember now how long I got the box. I think I had it before, around 1938 or 1939, something like that.

Mr. Robinson. Did you know Mr. Dillon before you went into the penitentiary?

Mr. De Lucia: No.

Mr. Robinson. Do you know how he was retained?

Mr. De Lucia. Well, I understand Mrs. Campagna knowed somebody in St. Louis and she made the connection and Mr. Dillon went for us. That story is well known.

Mr. Robinson. You had nothing to do with it yourself?

Mr. De Lucia. No, sir; I paid him after I got out. I paid my share of $5,000.

Mr. Robinson. Do you have any interest in any other business since you came out of the penitentiary?"

1972 By Mr. Green: Excuse me. I don't think our copy agrees.

By Mr. Barnett: Oh, I should continue reading this.

"Mr. Halley: Does anybody owe you any money today?

Mr. De Lucia. Yes; the farmer owes me $5,000.

Mr. Halley. Does anybody owe you sums in excess of $10,000?

Mr. De Lucia. No.

Mr. Halley. Nobody whatsoever?

Mr. De Lucia. No.

Senator Wiley. What did you mean by saying that story is well known, referring to Dillon?

Mr. De Lucia. It was investigated by the house committee, and all that.

Senator Wiley. Do you know the facts?

Mr. De Lucia. That is all I know.

Mr. Robinson. Do you have any interest in any other business since you came out of the penitentiary?

Mr. De Lucia. No, sir.

Mr. Robinson. And you have listed all the stock and all the property that you had.

Mr. De Lucia. That is right.

Mr. Robinson. What interest did you have prior to the time that you went to the penitentiary in busi-
1973 ness?

Mr. De Lucia. No interest whatsoever.

1974 Mr. Robinson. Did you ever have any interest in any gambling establishments in Chicago?

Mr. De Lucia. No, sir.

Mr. Robinson. Never at any time?

Mr. De Lucia. No, sir.

Mr. Robinson. Did you ever receive any revenue or any income from any gambling establishments?

Mr. De Lucia. No, sir.

Mr. Robinson. You mentioned that you received some money from gambling.

Mr. De Lucia. Yes, sir; my own gambling.

Mr. Robinson. How did you receive that?

Mr. DeLucia. I have done my own gambling."

By Mr. Barnett: We go to the top of page 13:

"Mr. Robinson. Were you a betting commissioner?

Mr. De Lucia. No; I was betting for myself.

Mr. Robinson. Where did you place the bets?

Mr. De Lucia. With myself.

Mr. Robinson. Did you handle bets for anyone else?

Mr. De Lucia. Why, sure. No; what do you mean by anyone else? You mean they bet with me? Yes.

1975 Mr. Robinson. How large a sum would you handle in gambling over a space of a year?

Mr. De Lucia. That I wouldn't be able to tell you. Them days are gone. I just can't remember.

Mr. Robinson. Would it be $2,000 or $100,000 or $50,000 or what?

Mr. De Lucia. You mean in a year?

Mr. Robinson. In a year's time.

Mr. De Lucia. Gee, I don't know. I suppose sometimes I would make $100,000 a year or something like that, sometimes less.

Senator Wiley. You would make that much clear?

Mr. De Lucia. Sure.

1976 Mr. Robinson. How much would you handle?

Mr. De Lucia. I wouldn't know. That is a thing that I don't recall.

The Chairman. A million dollars or two million?

Mr. De Lucia. No, not a million dollars. I don't know. I just lost all track of that stuff. After all, I haven't bothered for the last seven or eight years with that stuff.

Mr. Robinson. Would you handle three or four hundred thousand dollars during the course of a year?

Mr. De Lucia. Between losing and winning, because you lose, too, you have to think of that.

Mr. Robinson. That is right.

Mr. De Lucia. I don't know.

The Chairman. It goes without saying that if you made $100,000—

Mr. De Lucia. The way I used to do it, I put the money away, and at the end of the year when I win, I win. That is all.

Mr. Robinson. Did you receive any other income from anything else except from gambling?

Mr. De Lucia. No; that is all I made my money.

Mr. Robinson. Did you ever have any interest in
1977 the liquor business?

Mr. De Lucia. No, sir.

Mr. Robinson. In the beer business?

Mr. De Lucia. No, sir.

Mr. Robinson. At no time did you ever have any interest or receive any income from the sale of liquor or the manufacture of liquor?

Mr. De Lucia. No, sir.

Mr. Robinson. When did you first come to Chicago?

Mr. De Lucia. 1920.

Mr. Robinson. What were you doing at that time in Chicago?

Mr. De Lucia. I was working with the Dandy Theater. There was an Italian theater in the street, and I was working there.

Mr. Robinson. Were you a waiter there?

Mr. De Lucia. No, that was a theater, Italian theater. Then I went to work at the Belanapoli Restaurant. That is an Italian restaurant.

Mr. Robinson. You were a waiter there.

Mr. De Lucia. No, I was day manager there.

Mr. Robinson. Where did you work after that?

Mr. De Lucia. After that I started to make friends and I started to get in the gambling business."

* * *

1978-1984 * * *

1985 * * * Mr. Halley. Is it your position that you were not guilty in the extortion case?

Mr. De Lucia. Yes.

Mr. Halley. You never tried to extort money from anybody?

Mr. De Lucia. No, sir."

By Mr. Barnett: Turn to page 24, near the bottom. Mr. Robinson asked:

"Mr. Robinson: What was Curry's business?

Mr. De Lucia. What?

Mr. Robinson. James Curry; what business was he in?

Mr. DeLucia. Curry is a land owner. He had a farm.

Mr. Robinson. What else do you know about him? What other business was he in? Was he in the gambling business?

Mr. De Lucia. No.

1986 Mr. Robinson. What did he do after he left your place?

Mr. De Lucia. I don't know. I didn't see him anymore. I was told not to see him anymore.

Mr. Robinson. Who told you that?

Mr. De Lucia. Oh, my parole man told me. You see, when I came out, my lease with him expired in March, the next March, you see. So he said to come there and get his stuff, and he was around, and I was told that I shouldn't have anything to do with him.

Mr. Robinson. Didn't you know that he went into the gambling business?

Mr. De Lucia. No; I never saw him anymore.

Mr. Robinson. You mentioned a house at Miami Beach. When did you acquire that?

Mr. De Lucia. I didn't buy a house at Miami Beach. I rented it, for a year.

Mr. Robinson. Oh, you rented it?

Mr. De Lucia. Yes.

Mr. Robinson. Did you receive visits in prison from Bernstein?

Mr. De Lucia. Yes.

Mr. Robinson. Did he appear alone the first time 1987 he visited you?

Mr. De Lucia. Yes.

Mr. Robinson. Did you talk to him?

Mr. De Lucia. No; I didn't talk to him.

Mr. Robinson. You didn't talk to him?

Mr. De Lucia. No.

Mr. Robinson. Did he appear again with Accardo?

Mr. De Lucia. That was the reason why Accardo came; one of the reasons.

Mr. Robinson. You didn't talk to Bernstein until Accardo came?

Mr. De Lucia. Yes.

Mr. Robinson. Why was that?

Mr. De Lucia. Because I didn't know Bernstein and I wasn't going to talk over any tax matter with him unless I found out what was the trouble. I didn't know there was any trouble anyway.

So he came over and said things were kind of upset, and all that. He was a good tax lawyer, and I talked to him.

Mr. Robinson. Had you retained Bernstein?

Mr. De Lucia. Yes.

Mr. Robinson. How did you retain Bernstein?

Mr. De Lucia. My Mrs. retained Bernstein.

1988 Mr. Robinson. Who?

Mr. De Lucia. My wife.

Mr. Robinson. And asked Bernstein to go to see you in prison?

Mr. De Lucia. Yes.

Mr. Robinson. And you refused to talk to him?

Mr. De Lucia. Yes.

Mr. Robinson. Where were you, in prison?

Mr. De Lucia. In Leavenworth.

Senator Wiley. Were you at any other prison before that?

Mr. De Lucia. Yes, in Atlanta.

Mr. Robinson. Why did you tell Bernstein you wouldn't talk to him?

Mr. De Lucia. I didn't want to talk to nobody about my tax. I was in jail, and I figured I don't care what happens.

1989 Mr. Robinson. Did you tell him to see Accardo?

Mr. De Lucia. No, no. He naturally went back. He figured he would get somebody and talk to Paul and make me understand the seriousness of the affair, and that was all.

Mr. Robinson. That is the reason Accardo came?

Mr. De Lucia. Yes.

Mr. Robinson. You didn't tell him to bring Accardo down to vouch for him?

Mr. De Lucia. No.

Mr. Robinson. You did have some income tax difficulty at one time?

Mr. De Lucia. Yes.

* * *

1990-1993 * * *

1994 * * * Senator Wiley. And you are saying to this Committee that in the case of the fine you do not know who paid your fine?

Mr. De Lucia. I know who paid the fine. The fine was $10,000. It was paid in New York.

1995 Senator Wiley. $110,000?

Mr. De Lucia. No, $10,000. That is a different story. The fine was paid in New York.

Senator Wiley. How much was that?

Mr. De Lucia. $10,000. But the other stuff is the income tax.

Senator Wiley. Who paid that?

Mr. De Lucia. That fine Bulger took care of when we left some money with him, you see. He was the lawyer on the trial.

The Chairman. Who was that that paid at the trial?

Mr. De Lucia. Bulger.

The Chairman. That same man who was president of the Italian-American League?

Mr. De Lucia. Yes. But we gave him the money.

Senator Wiley. That was the time you had ten years, and you had to pay the $10,000 fine?

Mr. De Lucia. Yes. The tax settlement is different.

• • •

1996 • • •

1997 • • • Mr. Robinson. Isn't it true that Accardo took care of your interests while you were in prison?

Mr. De Lucia. No, no.

Mr. Robinson. Isn't it true that you asked him to look out for your interests while you were in prison?

Mr. De Lucia. No, sir.

Mr. Robinson. Generally speaking; I don't mean to run the place.

Mr. De Lucia. No, sir.

Mr. Robinson. Why did Accardo come to visit you in prison?

Mr. De Lucia. He was a friend of mine. He was my neighbor, and he came. And it was a friendly act. That is all.

Mr. Robinson. Didn't he tell you at the time that it was all right for you to talk to Bernstein?

Mr. De Lucia. Yes, he advised me to talk to Bernstein, or else things were going to be bad, and they
1998 were going to charge me a lot of money, and that way the thing could be settled."

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1999-2000 • • •

2001 • • • "Mr. Halley. I have been looking at your income tax returns, Mr. DeLucia. I gather that in
1949 you lost money on your farm. Is that right?

Mr. De Lucia. Why, sure. I lost money every year.

Mr. Halley. And the farm is the only business you have?

Mr. De Lucia. Yes.

Mr. Halley. Is that correct?

Mr. De Lucia. Yes.

Mr. Halley. Have you put up that farm for sale?

Mr. De Lucia. No, I don't want to put up that
2002 farm for sale unless I have to. You see, I inquired around, but the farm is too big to sell. It would be five or six hundred thousand dollars. I will tell you this much. If next year—with all this improvement, now, I think I should start to make money now, you see. But if I don't, I will split the farm up and try to sell it.

Mr. Halley. The fact is that up to this time you have had no income from the farm?

Mr. De Lucia. Well, I have spent money on improvements, you see.

Mr. Halley. You have spent more than you have made?

Mr. De Lucia. I built a barn there, and all that.

Mr. Halley. And you still have a large house in River Forest; isn't that right?

Mr. De Lucia. Yes.

Mr. Halley. What did you pay for that house?

Mr. De Lucia. $25,000.

Mr. Halley. What would you say its value is today?

Mr. De Lucia. Oh, about $100,000.

Mr. Halley. And you have another country place;
2003 is that right?

Mr. De Lucia. Yes; in Long Beach.

Mr. Halley. And what would you say your annual living expenses are, with all these expensive homes you maintain?

Mr. De Lucia. About a couple of thousand dollars a month.

2004 "Mr. Halley. 'About a couple of thousand dollars a month.' You are not beginning to wory about the fact that your assets are going down, are you?

Mr. De Lucia. I am. I tried to sell my house on Long Beach, and I couldn't sell it, and I think next year, if I can't make it up, I will sell my farm.

Mr. Halley. But you haven't begun economizing at all, have you?

Mr. De Lucia. I will. I will start to do the best I can from now on, on that. I won't have to economize anymore, because there won't be much expense at the farm. I have those bulldozers, and I can make 30 or 40 thousands dollars a year at the farm.

Mr. Halley. You made $42,000 last year, didn't you?

Mr. De Lucia. Yes. And everything is built now.

Mr. Halley. You can't take off what you built on your depreciation. You were spending capital, weren't you?

Mr. De Lucia. Yes.

Mr. Halley. Now your capital is down to about 2005 $40,000 in cash?

Mr. De Lucia. Yes.

Mr. Halley. And you say you have about $11,000 in stock?

Mr. De Lucia. Yes.

Mr. Halley. And how much in the bank?

Mr. De Lucia. Oh, about $1,000 in the bank.

Mr. Halley. A thousand dollars in the bank?

Mr. De Lucia. Or something like that.

Mr. Halley. What is troubling me is that you are not acting like a man who is down to your last $50,000. I notice by your books that you bought a Cadillac last month.

Mr. De Lucia. If you see the books, you will notice I sold my other Cadillac.

Mr. Halley. And you paid something over $4,000 for a new one.

Mr. De Lucia. You see, a car lasts me about three years, three or four years.

Mr. Halley. Who drives your car?

Mr. De Lucia. Myself.

Mr. Halley. How many people do you have on your payroll at the farm?

Mr. De Lucia. Over there you have them all.

2006 Mr. Halley. What is your recollection?

Mr. De Lucia. Well, in the wintertime you can get along with three or four. In the summertime, during the hay season and during the summer generally, five or six, just for a few days or for a few weeks.

Senator Wiley. I might say for the record here, that his 1950 statement shows assets of $390,000 and he has here notes payable of $625, mortgage payable of $10,000, loan payable, mortgage, Long Beach property, $40,000, and mortgage payable, Prudential Insurance Co. of America, $84,000. That seems to be all that you owe, there, I take it. And it is interesting to note that he lists his land at $18,000. He built a new barn for $81,000.

What year did you build this barn?

Mr. De Lucia. 1948, I think.

2007 Senator Wiley. You built an $81,000 barn in 1948. Was that the time you took the mortgage in the Prudential Co.?

Mr. De Lucia. No; that was when I bought that—.

Senator Wiley. When you got tractors, wagons, implements, machinery, for $44,000?

Mr. De Lucia. You see that is a big farm, Senator. It takes a lot of equipment, and all that."

By Mr. Barnett: Page 35.

"Mr. Robinson. What was your income from 1940 to 1943? Can you recall?

Mr. De Lucia. Oh, very small. You mean, 1940 to 1943?

Mr. Robinson. That is right.

Mr. De Lucia. Oh, I thought you meant 1943 to 1947. I would say about $300,000.

Mr. Robinson. That was your net income?

Mr. De Lucia. No.

Mr. Robinson. What was your net income? Can you recall approximately what your net income was, from 1940 to 1943, annually?

Mr. De Lucia. I don't recall that. It is all a matter of fact. You can see it.

2008-2012 • • •

2013 • • • Senator Wiley. Did you make any substantial loan from anybody?

Mr. De Lucia. Oh, yes.

Senator Wiley. Who?

Mr. De Lucia. I have a mortgage on the farm, on the farm and on the house.

Senator Wiley. You borrowed that money, then, too?

Mr. De Lucia. I borrowed it, yes.

Senator Wiley. Well, if you had the $300,000, why did you borrow that money?

Mr. De Lucia. Because, Senator, I have a long time to go. I have three more years to go on parole. And at the rate I am going, I have to come out sometime and borrow money. So I might as well prepare myself.

Senator Wiley. What I am trying to find out is this.

If you borrowed that money, it could easily be
2014 ascertained when that was instituted. That $84,000
is one. That is the large one. And $40,000 is the other. If you borrowed that since 1947, you came out in '47 with $300,000 in cash. Just why would anybody want to borrow all this money, if you had the money on hand?

Mr. De Lucia. Because I have six years to go, Senator, and at the rate I am going, I am not going to make it. And I can see now that next year I may have to sell the farm.

Senator Wiley. Well, you were telling us that you made $40,000 a year off of the farm, and that you used some of that money.

Mr. De Lucia. Well, this year looks bad. The corn looks bad."

2015 • • •

2016 • • • Mr. Halley. Who is Hugo Bennett?

Mr. De Lucia. He is a bookkeeper for the Sportsman's track.

Mr. Halley. And did you have any financial transactions with him?

Mr. De Lucia. Yes; he made me a mortgage for $40,000.

Mr. Halley. On what?

Mr. De Lucia. On my house at Long Beach. And recently he gave me a mortgage for $40,000 on my farm.

2017 Mr. Halley. How much do you owe Hugo Bennett now?

Mr. De Lucia. $80,000.

Mr. Halley: $80,000?

Mr. De Lucia. Yes.

Mr. Halley. Is that the money at Sportsman's Park, or his own personal money?

Mr. De Lucia. That is his own money.

Mr. Halley. How long have you known Hugo Bennett?

Mr. De Lucia. I knew him for a long time. I knew his father. I knew him when he was going to school."

• • •

2018 • •

2019 By Mr. Barnett: Page 43:

"Mr. Halley. What interest do you pay Bennett?

Mr. De Lucia. Oh, I don't know what it is, 4 per cent or 6 per cent. I don't know.

Mr. Halley. Did you pay any of the principal back?

Mr. De Lucia. No; I have an understanding that in five years I pay interest.

Mr. Halley. You mean right now you pay nothing?

Mr. De Lucia. No.

Mr. Halley. No interest and no principal?

Mr. De Lucia. No.

Mr. Halley. That is a nice mortgage; isn't it?

Mr. De Lucia. Well, he is a friend of mine. I can't go to the bank. It is a friendly transaction."

* * *

2020 "Mr. Robinson. Did you own a house at 5301 West Jackson Street?

Mr. De Lucia: No; I was living there.

Mr. Robinson. What is that?

Mr. De Lucia. I was renting there.

Mr. Robinson. You were renting there. You never owned that?

Mr. De Lucia. No, sir."

* * *

2021-2023 * * *

2024 * * * Mr. Robinson. I believe you also testified previously, Mr. DeLucia, that you had made several loans since you came out of the penitentiary.

2025 Mr. De Lucia. Yes; two loans.

Mr. Robinson. Do you remember when the first one was?

Mr. De Lucia. I think the first one was around 1948. I am not sure about 1948.

Mr. Robinson. Did you receive a loan from Mr. Bennett?

Mr. De Lucia. Yes, sir.

Mr. Robinson. When, to the best of your recollection?

Mr. De Lucia. To the best of my recollection it was

around the spring or a little later than the spring, something around that.

Mr. Robinson. Do you remember how long it was after you came out of the penitentiary that you made that loan?

Mr. De Lucia. I would say about a year, anyway.

Mr. Robinson. A year after you came out?

Mr. De Lucia. Something lake that, maybe less or more.

Mr. Robinson. Will you tell what the circumstances were.

Mr. De Lucia. I told you, Mr. Robinson, I figured I had to spend a lot of money there. I made my plans
2026 to improve the farm to the best I could do it, and I said with this money I got, I always try to keep some cash on hand, and I tried to borrow some money on my house or something so I have some money to play with.

Mr. Robinson. Why did you pick Mr. Bennett?

Mr. De Lucia. Because Bennett—I couldn't go to no bank. Nobody would borrow me any money on my reputation and all that, so I scratched my head and said, 'Oh, gee.' I knew Bennett was working at the track, and I said, 'Maybe he can help me.' I called him, and that is all.

Mr. Robinson. Hadn't you got even loans from banks or insurance companies?

Mr. De Lucia. $11,000 worth. I went to the bank where I was dealing, and I asked them if I could get more money, and I brought my insurance policy, securities and this and that. I couldn't get a penny. He said, 'No, you have to bring collateral or else you get nothing.' So I had to get all my bonds, the bonds I had and put them in escrow to them and I got dollar for dollar. That is the chance the bank took. So that is all I got. I talked

to Bennett and I explained my situation, and he said I will try to do the best I can.

2027 Mr. Robinson. When did you first get in touch with Bennett?

Mr. De Lucia. I don't remember. It was somewhere around that time. I was looking out for myself ahead, Mr. Robinson. He said, 'I will let you know.' Then later on I called and he said, 'Any time you want it.'

Mr. Robinson. Did you see him personally or call him by telephone first?

Mr. De Lucia. I called him by phone first.

Mr. Robinson. You asked him then for the loan?

Mr. De Lucia. I called him and wanted to see him. He came over to the house and I talked to him.

Mr. Robinson. How long have you known Bennett?

Mr. De Lucia. I have known Bennett for a long time. I knew him when he was a kid.

Mr. Robinson. How many times had you seen him while you were in the penitentiary?

Mr. De Lucia. I never saw him in the penitentiary.

Mr. Robinson. Did he ever write to you in the penitentiary?

Mr. De Lucia. No, sir.

2028 Mr. Robinson. How many times did you see him before you went into the penitentiary?

Mr. De Lucia. I asked him about the track or something like that. I used to see him sometime with the family or something like that.

Mr. Robinson. How frequently would that be?

Mr. De Lucia. Oh, you have got me on something I wouldn't know, not so much, but quite a few times.

Mr. Robinson. Would it be four or five times a year?

Mr. De Lucia. I would say so, yes.

Mr. Robinson. Not more than that?

Mr. De Lucia. Well, maybe more or less.

Mr. Robinson. Did you know Bennett's father?

Mr. De Lucia. Yes, very well. I know his brother.

Mr. Robinson. What business is his father in?

Mr. De Lucia. His father was a painter, as much as I know.

Mr. Robinson. By painter you mean—

Mr. De Lucia. He was an amateur painter, or something. But here is what it is: The real story is that he used to be, when I used to work in the theatre, when first I came over here, he used to take part in the Italian
2029 show there. He used to play parts. He would take part in the show. That is how I know him.

Mr. Halley. What is Bennett's right name?

Mr. De Lucia. Benvenuti.

Mr. Robinson. How was the first loan made?

Mr. De Lucia. I don't remember, Mr. Robinson. I think the first one I got $10,000. Then I got the rest.

Mr. Robinson. *How did you get the rest?*

Mr. De Lucia. I don't remember if I got checks or cash.

Mr. Robinson. Do you recall whether or not you got a check from Bennett?

Mr. De Lucia. Yes, I got the first check and then I got the second check of $30,000 from Bennett?

Mr. Robinson. You definitely remember whether you got the second check of $30,000 form Bennett?

Mr. De Lucia. I am pretty sure. Don't hold me to that. You know, Mr. Robinson, I try to tell you the best of my recollection, and I think that is what it is. Don't hold me to it because lots of things happen to me and my mind at times gets hazy on that stuff.

Mr. Robinson. You know how you would get a
2030 $30,000 loan.

Mr. De Lucia. I think I got a check both times.

Mr. Robinson. Did you at any time get cash as part of that $30,000?

Mr. De Lucia. No; I don't think so.

Mr. Robinson. Would you say you didn't?

Mr. De Lucia. I wouldn't say that, but I am pretty sure I got checks. I deposited it in the bank.

Mr. Robinson. Was there a mortgage that went with that first $40,000 loan?

Mr. De Lucia. That is right.

Mr. Robinson. On what property?

Mr. De Lucia. On Long Beach. I told them, I said, 'I am going to sell this.' I had a prospect for sale. They came around. First they say they do and then when we try to close the deal they backed down. I have a few prospects now to sell. As soon as I sell I gave him the money.

Mr. Robinson. Did you actually give a mortgage on that property?

Mr. De Lucia. Why, certainly.

2031 Mr. Robinson. Do you remember what the terms of the note were?

Mr. De Lucia. I think the mortgage was around four or five per cent. I don't know, four or five per cent interest, something like that.

Mr. Robinson. Was there any due date on the mortgage?

Mr. De Lucia. Yes; five years. I figured in five years I would sell.

Mr. Robinson. You have paid no interest on that mortgage?

Mr. De Lucia. No, sir.

Mr. Robinson. Was that part of the arrangement?

Mr. De Lucia. I don't know. My understanding was that I was going to pay the whole thing. You see, the idea was that I was going to sell the house.

Mr. Robinson. How did you receive the second loan?

Mr. De Lucia. The second loan I got a check—I met him at the Cicero bank and I think the check was cashed over there.

Mr. Robinson. Was the check made out to you?

Mr. De Lucia. To me; yes.

Mr. Robinson. And was cashed at the Cicero bank?

2032 Mr. De Lucia. I don't remember the name of the bank, a Cicero bank.

Mr. Robinson. What did you do with that money?

Mr. De Lucia. I kept it myself and I used it.

Mr. Robinson. Did you put any of that money in the bank?

Mr. De Lucia. Why, certainly, whatever money I had left. Until I needed some money for the family I put it in the bank.

Mr. Robinson. Do you have any records to show that?

Mr. De Lucia. You have the bank records.

Mr. Robinson. Do you know whether that $40,000 loan, the second one, was entered in your books or not?

Mr. De Lucia. I think so. I think it was entered in my books.

Mr. Robinson. Who keeps your books?

Mr. De Lucia. Bernstein. You have the books there.

Mr. Robinson. Do you remember telling him to enter that in the books?

Mr. De Lucia. Certainly he put it in the books; yes.

Mr. Halley. While we are on that second loan, 2033 did you give a note for it? Did you sign a note?

Mr. De Lucia. I gave him the deed to the farm and all that.

Mr. Halley. You didn't sign the deeds over, did you?

Mr. De Lucia. No. This lawyer got all that stuff.

Mr. Halley. What is the lawyer's name?

Mr. De Lucia. Joe Butler.

The Chairman: Where is he?

Mr. DeLucia. He is at 105 Adams Street.

Mr. Halley. Why did you need the second loan?

Mr. De Lucia. Because I was getting pretty close. I needed some more money. As I told you, I always like to keep some money on hand.

Mr. Halley. You made the first loan when, how soon after you came out of prison?

Mr. De Lucia. I think about a year or shortly after that.

Mr. Halley. How long after that did you make the second loan?

Mr. De Lucia. This year, somewhere in the summer time, or the early part of the summer.

Mr. Halley. Just a few months ago?

Mr. De Lucia. Yes.

2034 Mr. Halley. You borrowed a second $40,000?

Mr. De Lucia. That is right.

Mr. Halley. You say the reason is that you were getting short of cash?

Mr. De Lucia. Yes.

Mr. Halley. You received a check from Bennett?

Mr. De Lucia. Yes. I signed it at the bank and I got cash.

Mr. Halley. Did you got to the bank with Bennett?

Mr. De Lucia. Yes.

Hr. Halley. His bank?

Mr. De Lucia. Some bank in Cicero. I don't know if it was his bank or not.

Mr. Halley. What bank?

Mr. De Lucia. I think it was the Cicero State Bank or something like that.

Mr. Halley. You signed the back of the check?

Mr. De Lucia. Yes, that is right.

Mr. Halley. You testified some time ago that you still had $30,000 or $40,000 left of your own money.

Mr. De Lucia. Now, yes.

Mr. Halley. Is that in addition to the $40,000?

Mr. De Lucia. No, all included.

Mr. Halley. So that right now is it your testi-
2035 money that you are broke except for the money you borrowed from Bennett?

Mr. De Lucia. No, I ain't broke. I got about $40,000.

Mr. Halley. You have about $40,000?

Mr. De Lucia. Yes.

Mr. Halley. But you say you got $40,000 from Bennett a few months ago.

Mr. De Lucia. Yes.

Mr. Halley. Is the $40,000 you have in addition to what you got from Bennett?

Mr. De Lucia. No, I mixed all I had. When I got the money I mixed it with some money I had in the bank.

Mr. Halley. So right now you have—

Mr. De Lucia. $40,000. It would be a little less now.

Mr. Halley. That $40,000 is what you owe Bennett, is that right?

Mr. De Lucia. Yes.

Mr. Halley. Also you owe him another $40,000 on the mortgage?

Mr. De Lucia. That is right.

Mr. Halley. When are you supposed to pay the second $40,000 back?

2036 Mr. De Lucia. I think it is about five years.

Mr. Halley. In about five years?

Mr. De Lucia. Yes.

Mr. Halley. Did you give him something in writing?

Mr. De Lucia. They got my deeds and all that stuff for the farm, whatever it is.

Mr. Halley. Did you write something on the back of the deed?

Mr. De Lucia. No, I don't remember writing anything.

Mr. Halley. You didn't write anything?

Mr. De Lucia. No.

Mr. Halley. Did you write anything on the front of the deed?

Mr. De Lucia. No.

Mr. Halley. You just handed it to him?

Mr. De Lucia. I just handed him the deed, that is all.

Mr. Halley. You could get your deeds back. That doesn't mean anything, does it, handing a man a deed?

Mr. De Lucia. I understand the lawyer to say it was all right. Whatever kind of deal it was, I don't know.

Those things are done by a lawyer. I don't know
2037 about that.

Mr. Halley. You didn't even give Bennett a note?

Mr. De Lucia. No.

Mr. Halley. How did you approach him for the second $40,000? Will you tell the committee just what happened?

Mr. De Lucia. I caled him again and I said, 'I need a little more money here. I tried to get money from the Metropolitan. I tried to get money from the Oak Park, and tried to get money from the Prudential because I figured maybe I could make a mortgage there, and they all turned me down.'

I said, 'Hugh, I am in the same predicament;' and asked him if he would help me out and he said he would.

2038 Mr. Halley. Did you got to see him?

Mr. De Lucia. Yes. He came over to the house.

Mr. Halley. About when did he come, would you say?

Mr. DeLucia. I don't remember that, Mr. Halley.

Mr. Halley. Was it summertime?

Mr. De Lucia. How can you remember that?

Mr. Halley. It is a very important thing to remember, so let's try hard?

Mr. De Lucia. He came over to the house and I told him, see.

Mr. Halley. Was it in May, June—

Mr. De Lucia. It was around there. It was shortly before I got the mortgage.

Mr. Halley. Shortly before you got the mortgage.

Mr. De Lucia. Yes. He said give me the paper and I will have a lawyer work on it.

Mr. Halley. We are not talking about the mortgage here. We are talking about the second loan.

Mr. De Lucia. That is right; yes.

Mr. Halley. There was no mortgage on the second loan?

Mr. DeLucia. They have got it, the lawyer. I don't know. It is at the bank or some place.

Mr. Halley. I thought you said that the mort-
2039 gage was on the first loan.

Mr. De Lucia. A mortgage on the farm, too, on the second loan.

Mr. Halley. You made out a second mortgage?

Mr. De Lucia. That is right.

Mr. Halley. I thought you said you didn't sign any papers.

Mr. De Lucia. I didn't sign any papers. I don't remember signing any papers. If I signed any I don't know.

Mr. Halley. How could you give a mortgage without signing a paper?

Mr. De Lucia. Because my property is in trust with the Oak Park National Bank, and I told them that and they went over to the bank there and they made it.

Mr. Halley You mean they got a mortgage from the Oak Park Bank?

Mr. De Lucia. I suppose so; yes. That is how they worked it.

Mr. Halley. What lawyer represented you in the transaction?

Mr. De Lucia. I didn't have a lawyer. The Oak Park Bank is my trustee, you see.

2040 Mr. Halley. What kind of trust is that?

Mr. De Lucia. I put all my property in trust.

Mr. Halley. When did you do that?

Mr. De Lucia. I did that I think about a year or so after I came out.

Mr. Halley. Is it a trust of which you are the beneficiary?

Mr. De Lucia. No, my kids and my wife.

Mr. Halley. Your kids and your wife are the beneficiaries?

Mr. De Lucia. That is right.

Mr. Halley. The Oak Park National Bank is the trustee.

Mr. De Lucia. The trustee; yes.

Mr. Halley. With whom do you deal personally at the Oak Park Bank? Who is the man who takes care of your matters?

Mr. De Lucia. I don't know who it is. I think the fellow who did that for me was Joe Bulger. I think one of the fellows was Tomasco and Spring.

Mr. Halley. Joe Bulger?

Mr. De Lucia. Joe Bulger is the one that made the trust for me.

Mr. Halley. He made the trust for you. I
2041 thought you said he was Bennett's lawyer?

Mr. De Lucia. No. That is Butler who is Bennett's lawyer.

Mr. Halley. And yours is Bulger?

Mr. De Lucia. Bulger, Joseph Bulger. You know him.

Mr. Halley. Is Bulger the man who used to be the head of the Italian-American League?

Mr. De Lucia. Yes, sir; in fact, he is now.

Mr. Halley. And he is your lawyer?

Mr. De Lucia. That is right. He was on that thing. He took care of it.

Mr. Halley. He made the trust for you.

Mr. De Lucia. That is right."

By Mr. Barnett: Page 226:

"Mr. Halley. Why is that when you get a sum as large as $40,000 you take that in cash and do not put it in the bank?

Mr. De Lucia. That is a lot of money to put in a bank, $40,000, all at one time, Mr. Halley.

Mr. Halley. Don't you think it is a lot of money to keep in your house in cash?

Mr. De Lucia. Well, I needed some cash for the house.

I needed some cash, you know, you never can tell.
2042 So I figure I can keep the money. I always like to keep money in my hands.

Mr. Halley. For what did you need sums in money in cash?

Mr. De Lucia. I always like to keep money in cash on hand. I was told when I was a boy to keep cash money on hand at all times."

By Mr. Barnett: Page 27.

2043 "The Chairman. There isn't anything about this security matter. The money is more secure in a bank than it is in a box in your house.

Mr. De Lucia. That is right.

The Chairman. We want to know why you had to keep such large sums of money in your house or on yourself.

Mr. De Lucia. I am sorry, Senator, I can't give a better answer than that, and I mean it. I am sincere about it. I always like to keep money in my hands.

Mr. Halley. At the time you borrowed that money, how much money of your own did you have left?

Mr. De Lucia. I don't remember. If I say anything else, I tell you a lie. I know I was getting pretty low.

Mr. Halley. It was getting pretty low.

Mr. De Lucia. Yes.

Mr. Halley. Did you have $10,000 left?

Mr. De Lucia. I don't know. I don't know.

Mr. Halley. When did you make this loan? You say in the summer time.

Mr. De Lucia. Two or three months ago, some-
2044 thing like that, three or four months ago.

Mr. Halley. How much money did you spend in the last three months?

Mr. De Lucia You have it there.

Mr. Halley. have it where?

Mr. De Lucia. In the reports and all that.

Mr. Halley. No; I want you to tell me.

Mr. De Lucia. I don't remember, Mr. Halley.

Mr. Halley. Would you say under oath that it is your testimony that everything you spent in the last three months is reflected in your books?

Mr. De Lucia. I would, yes.

Mr. Halley. Do you spend large sums in cash for any purpose whatsoever?

Mr. De Lucia. No.

Mr. Halley. Do you use any money for gambling?

Mr. De Lucia. No.

Mr. Halley. Did you lend any of that money to anyone else—

Mr. De Lucia. No, sir.

The Chairman. Wait and get the question now. Did you lend any of that money to anyone else—

Mr. De Lucia. No, sir, no, Senator.

The Chairman. Or give it to them?

Mr. Chairman. O[illegible]no.

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2045-2047 • • •

2048 Mr. Halley. You say altogether now you have only about $40,000.

Mr. De Lucia. That is right.

Mr. Halley. There is no mistake there?

Mr. De Lucia. No.

Mr. Halley. That $40,000 is the same amount you just borrowed in May? All you could have had in May is what you spent between May and now, if you have $40,000 left now.

2049 Mr. De Lucia. I had some money left, I told you. I had some money left, and when I got the $40,000, I mixed it with what I had left.

Mr. Halley. That is right, but now you have $40,000, you say.

Mr. De Lucia. Yes, maybe a little less or a little more."

By Mr. Barnett: That is all I have marked.

Do you have anything marked, Mr. Stewart?

By Mr. Stewart: No.

By Mr. Barnett: That concludes the testimony, your Honor.

* * *

2050-2059 * * *

2060 (Said documents, so offered and received in evidence, were marked Government's Exhibits 52, 53, 54, 5-A through 5-M, 6-A through 6-L and 7-A through 7-L.)

By Mr. Barnett: Your Honor, we have no further witnesses for this afternoon, and we are very close to the end. We have more computations which have to be 2061 put on. There may be some motions.

By the Court: You mean we can go home?

By Mr. Barnett: Yes. We haven't any more to offer this afternoon.

By the Court: Tomorrow morning?

By Mr. Barnett: That is what I would like to talk to your Honor about. Perhaps you should excuse the jury until we discuss it for a couple of minutes.

By the Court: Yes. The jurors will please retire for a few minutes. I may call you back in and discharge you for the balance of the week, I am not sure.

(Whereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By Mr. Barnett: As I say, your Honor, we are very close to the end. We have computations which have to be prepared, and I would like the balance of the afternoon to do that, in any event.

It just occurred to me that Mr. Stewart reserved his cross examination of Agent Mahon, and if he wants
2062 to further cross examine him, perhaps now would be the best time of all.

By Mr. Stewart: Wo are you going to use as your next expert?

By Mr. Barnett: Mr. Saldana.

By Mr. Stewart: I have no desire to cross examine Mr. Mahon any further.

By Mr. Barnett: In that event, your Honor, we do have the further computations to prepare.

By the Court: How long will it take?

By Mr. Barnett: If we need to, we can have them ready tomorrow morning, but I was thinking the possibility exists that there will be the usual motions made after that and perhaps—

By the Court: I thought if you could wind up your case by tomorrow morning, say at 11 o'clock, I could devote the afternoon to you gentlemen on all motions for directed verdicts and whatever I anticipate, without the presence of the jury, and then we will go on Monday with the defense, if I don't sustain them.

2063 By Mr. Barnett: As your Honor may be aware, there is quite a mass of detail in this case.

By the Court: I have in mind, giving counsel for the defense, as I promised them, a reasonable term to go over the transcript and to make a compilation of their respective—

By Mr. Stewart: We don't need it, Judge. We want to keep right on going.

By the Court: You don't need it?

By Mr. Stewart: We don't need anything, except a little speed, a little speed. That is all we want.

By the Court: All right. We will go right straight through.

By Mr. Stewart: Keep right on going.

By the Court: Tomorrow morning, 10:00 o'clock.

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2064-2094 * * *

2095 ANDRES M. SALDANA, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnett.

* * *

2096-2120 * * *

2121 By Mr. Barnett: No further direct examination, your Honor.

By Mr. Stewart: No cross.

2122 By Mr. Green: Motion to strike.

By the Court: Same ruling on Alger.

All right. Thank you very much.

(Witness excused.)

By Mr. Barnett: Your Honor, we are about to rest. Before formally resting, I would like an opportunity to check the record on exhibits offered, and therefore request that we be recessed until 2:00 o'clock this afternoon, at which time I will make any reoffer of exhibits and rest formally.

By Mr. Stewart: I can help the prosecutor out by saying that if he discovers later that he hasn't offered one, that he is entitled to put in any exhibit that your Honor has ruled upon. We can do that later, if your Honor wants to keep going.

By Mr. Green: That is agreeable to Mr. Bulger.

By Mr. Barnett: We have no place to go. We have no more witnesses.

By Mr. Stewart: Do you rest?

By Mr. Barnett: Yes, we rest.

2123 By the Court: Subject to that provision.

By Mr. Stewart: Yes, if he has overlooked any exhibits, he can put them in later.

And Thereupon The Government Rested Its Case.

By Mr. Stewart: Defense rests.

By Mr. Green: Defense rests.

And Thereupon The Defendants Rested Their Case.

2124 By the Court: All right.

Do you still want your time now?

By Mr. Barnett: Well, I assume the time now is for arguments.

By the Court: Do you want to proceed?

By Mr. Barnett: I don't know if they want to make any motions.

By the Court: That is up to them. Do you want to proceed with your arguments?

By Mr. Barnett: I do not care to proceed with my closing argument until this afternoon, your Honor. I think we are entitled to 2:00 o'clock for that.

By Mr. Stewart: That is all right.

By Mr. Barnett: We have instructions, your Honor, also, that we have to go into.

By Mr. Green: We can tender our instructions. We are ready for that, your Honor.

By Mr. Barnett: I think we should recess until Monday, your Honor, in order to prepare our instructions.

By Mr. Stewart: I don't think we need the time. We would like to go ahead. We can start at 2:00 o'clock.

2125 By the Court: We will take a five minute recess.

(Whereupon a short recess was taken, after which the following proceedings were had out of the presence and hearing of the jury:)

By the Court: I think we ought to spend this afternoon on the instructions.

By Mr. Barnett: Your Honor, I would like to have this afternoon to prepare my instructions. I havn't got my instructions all prepared. I can submit them to your Honor tomorrow morning, if you desire. We haven't seen the defense instructions yet.

By the Court: No. This case has taken much less than we anticipated.

By Mr. Barrett: That is right, your Honor.

By the Court: How long will it take you to argue?

By Mr. Barnett: How long does the defense want?

By Mr. Stewart: Well, I never know, Judge.

By the Court: I mean approximately.

By Mr. Stewart: I will try to watch the jury, and the minute they seem to be bored with me, I will quit.

By Mr. Green: That is the way I feel about it,

2126 too, your Honor. I don't want to talk them to death.

By the Court: I will sustain the objection to that.

By Mr. Green: I hope we know enough to sit down, that is all.

By Mr. Stewart: You don't want long, do you?

By Mr. Barnett: I think I can make my summation in about an hour, your Honor.

By the Court: Do you want to argue on these motions?

By Mr. Stewart: No; just pass on them.

By Mr. Green: As far as we are concerned, your Honor, we have a number of motions.

By the Court: I am going to overrule the motions of each defendant for a directed verdict.

By Mr. Green: Those have been filed in writing, your Honor.

By the Court: Yes. I have them here before me. Let the record so show.

By Mr. Green: And likewise the pending motions to strike on behalf of Bulger?

By the Court: Those will be overruled.

By Mr. Green: Yes, sir.

2127 By Mr. Stewart: Now, what remains is to argue the case to the jury.

By the Court: And all exhibits will be received in evidence.

By Mr. Green: They are all in evidence.

By the Court: I know, but if any were overlooked.

How long do you think you will argue?

By Mr. Barnett: Your Honor, I think I can probably sum up in about an hour.

By the Court: Will one full day be enough for both sides?

By Mr. Stewart: It looks like it.

By Mr. Green: Oh, sure.

By Mr. Barnett: I think it will be plenty.

2128 By the Court: Let's meet Monday morning for the instructions to the jury. Each of you will give me your set respectively, and we will sit down in chambers and go over them.

By Mr. Stewart: We would like to avoid that if we can. Can't we just submit our instructions to your Honor now, and then the Government can give them as soon as they are prepared? We have ours ready.

By the Court: I will take them. You don't want to discuss instructions in chambers?

By Mr. Stewart: Not particularly.

By Mr. Green: No, your Honor.

By Mr. Stewart: You can take them and give them or refuse them at your peril.

By the Court: All right. Then the same as to you, you submit yours, and I will also do that at my peril too.

By Mr. Barnett: Would you like to have our instructions tomorrow morning, Judge?

By the Court: I live from one crisis to another.

By Mr. Stewart: Your Honor, we have ours printed and they have a small number on each one at the corner.

I will give your Honor three copies, so that if your
2129 Honor will be good enough, you will mark one for us given and refused, and then we will know what you are doing because the Federal rule is that we must make our record before the jury.

By the Court: I will do that. If I have any questions, I will call both sides in at the same time.

By Mr. Barnett: I see an awful lot of instructions here, your Honor. I think you will be inclined to call us in after you see our instructions and theirs.

How many have they got? 103 instructions, I think it is, Judge.

By the Court: It will take me a week to give the instructions.

By Mr. Barnett: It will take you a week to read them, I think.

By the Court: I am not going to read them until I get yours because I don't want any duplications.

By Mr. Green: We will have two more instructions, your Honor, that Mr. Gorman is getting now. They were overlooked.

By the Court: All right. Bring out the jury.

By Mr. Barnett: Monday morning, then?

By the Court: Yes. Let's meet Monday morning 2130 at 10:00.

By Mr. Barnett: Your Honor, I might suggest that in light of the instructions the defendants have here that you might not want the jury back until Tuesday morning at 10:00 o'clock.

By Mr. Stewart: We would like to avoid that if we can, Judge.

By the Court: I am going to go on Monday.

By Mr. Barnett: With arguments?

By the Court: Do you have an extra set of these?

By Mr. Stewart: Yes, your Honor.

By the Court: I may want to take one home with me just to mark my own notations on it.

By Mr. Stewart: As a matter of fact, I will give you two more.

By the Court: No, just one is enough. I am going to take one with me so I will read these. I will mark my own copy up so I will know what to expect when I get yours.

By Mr. Barnett: All right, your Honor.

By the Court: Then I will take probably an hour to coordinate the two sets. I may take the lunch hour to do that.

By Mr. Barnett: We should, I think, ordinarily
2131 have an idea of how you will instruct in advance of our arguments so that when we are arguing to the jury we do not make any misstatements, your Honor.

By the Court: All right. I have no objection.

Then I will ask the jury—what I would like to do is time the arguments so that the jury will not start deliberating late at night. I would rather have them start deliberating—I would like to get your views on it because I know you understand the problem as well as I do. I

have had them by the hundreds in the Criminal Court. It is a question of timing them, their convenience, and the less time I have them holding overnight, the better I like it, the better they like it, and I think the fairer it is.

2132 By Mr. Stewart: Your Honor, I will make this suggestion, if it is agreeable to Mr. Barnett, that we have the jury come back at 11:00. That will give Mr. Barnett an hour and a half, and he ought to be through in that time, according to his estimate.

Then I can start at 2:00. In the meanwhile, at 10:00 o'clock, the lawyers could be here and talk to your Honor about what instructions you are going to give.

Will that be all right?

By Mr. Barnett: If your Honor thinks we can do it in that time, that will be all right.

By the Court: You won't have that many instructions?

By Mr. Barnett: Not nearly as many as they have, your Honor, but there are probably, roughly, thirty instructions that should be given in a case like this.

My guess is that the normal length of time it takes to instruct in a case like this would run between a half hour and forty minutes, reading the instructions.

By the Court: My judgment is this, and I am
2133 saying it with all consideration for both sides, if both of you could wind up your arguments in one morning, my reading the instructions will taken an hour. Then I would have them come in Tuesday morning.

Then I would give you these instructions Monday morning at 11:00 or 12:00 o'clock, so you could take them with you to prepare your arguments.

By Mr. Stewart: I don't need it, Judge. I can start arguing now. I do not want to take that time.

By Mr. Green: Right now, your Honor, we are ready.

By the Court: All right, Monday morning.

Bring out the jury.

By Mr. Green: 10:00 o'clock, your Honor?

By the Court: 11 o'clock for the jury, 10:00 o'clock for you.

* * *

2134-2135 * * *

2136 * * * Chicago, Illinois,
Monday, May 26, 1957,
10:00 o'clock a.m.

Court convened pursuant to adjournment.

* * *

2137 * * * By the Court: I have studied the numerous instructions of the defendant. I have read the Freidberg case, the Holland case, the Irving case, the Calderson case, the Skidmore case, so that at least I have a good base for my understanding of the law and the nature of the instructions which I am going to pass upon.

I would prefer sitting down with both lawyers,
2138 all the lawyers, in my chambers for an hour, an hour and a half, and, if I have a half hour to look over the Government's instructions, and from 11:00 to 12:00, if I can sit down with all of you—I don't mean to argue; that isn't the point—but, you have your respective copies, and you can mark them as I indicate to you and I have no objection to hearing from both sides as to why I am wrong or why I am right on that particular instruction—discussing how important it is.

I may lose the perspective of it and I don't want to do that. The practice has been in the State court to sit down with the lawyers and go over their respective instructions and to accept them or reject them, to mark them "Rejected" or "Refused." How do you mark them?

By Mr. Barnett: "Refused."

By Mr. Stewart: "Refused." We mark them "Refused" in the State court.

By Mr. Green: Of course, if your Honor please, it becomes a part of the record in the State court, whereas, it doesn't became a part of the record here.

By the Court: I beg your pardon?

2139 By Mr. Green: It becomes a part of the record in the State court whereas it doesn't here, if the instructions are marked "Refused."

By the Court: It is done as a courtesy and a desire to be right. I am not doing it as though it is a record or no record. I will give you a chance, respectively, to urge your point on each instruction. It may mean a lot and it may not mean a lot.

2140 By Mr. Stewart: May we state our position?

By the Court: Yes.

By Mr. Stewart: We appreciate your courtesy, but time and energy is of value, too. I don't care to go over the instructions, unless your Honor feels you are in need of our assistance. But, I don't think so, after you have read those cases.

Since you have read those cases you give what you believe to be a fair instruction.

By the Court: I tell you now I am giving a major portion of your instructions.

By Mr. Stewart: That is all right.

I figured if you gave half of my instructions, I would be satisfied.

By the Court: You have some instructions which are not consonant with the Holland case and the Freidberg case on the question of theory.

By Mr. Stewart: I am not consenting to anything your Honor does.

By the Court: Let us not make any commitments on consent. I have said that I have gone over them, at home, very carefully. I have not seen the Government's

instructions. I don't know what proportion they are, how much.

2141 By Mr. Stewart: As long as the Government doesn't have an instruction that they are instructing that the defendants be found guilty, why, I don't think they can hurt us. That is our position.

By the Court: I tell you now I am not going to give that instruction.

By Mr. Green: What was your Honor's position on the three typewritten instructions?

By the Court: Three of them are not consistent with the law. One of them is going to be good and I am going to give it.

By Mr. Green: I am anxious to know which one.

By the Court: I have no objection, if you come in, to discussing them with you. My mind is open.

By Mr. Green: Do you remember which one it is, sir?

By the Court: How?

By Mr. Green: Do you remember which one it is that you have decided to give?

By the Court: Just one second. I will pick them up.

2142 By the Court: You gave me three altogether, didn't you, Mr. Green?

By Mr. Green: That is right.

By the Court: This one, even though it needs some adjustment, I think it comes within the law, and that is:

> "Defendants Paul DeLucia and Joseph I. Bulger are charged in the fourth count of this indictment with entering into a conspiracy commencing about September, 1950, and continuing to the return of the indictment, which was March 14, 1957. You are instructed that the acts or declarations of an alleged conspirator—"

I think the Goverment will not like this one, but I feel that that is the law.

"done or made prior to the commencement of such alleged conspiracy or after its termination are not admissible against his alleged co-conspirator and should not be considered by you in any manner whatever in determining the guilt or innocence of such
2143 alleged conspirator under the count in the indictment."

By Mr. Green: That is the one we were interested in.

By the Court: That is the one that is important to you, and I think I may give it at this time unless I see something specific against it in the Government's instructions or something takes its place. In other words, this needs some adjustment.

By Mr. Barnett: The reason we took a little long with our instructions and the reason we have as many as we do—the number of our instructions is 60—is that we tried to include among our instructions all of the instructions of the defendants which we felt would be warranted. That instruction was one of them.

By the Court: That instruction was warranted?

By Mr. Barnett: That instruction is one of them that we feel is warranted and we have included it in our instructions, instruction No. 48.

By the Court: I presume these are copies that I have. These are not the originals. You must have the originals.

By Mr. Green: Yes, we gave you two sets.

By Mr. Barnett: That is instruction No. 49.

By the Court: What is your instruction 48?

2144 By Mr. Green: 48 is not the instruction, your Honor.

By Mr. Barnett: Look at instruction No. 49.

2145 By the Court: I haven't got yours. Well, if you are going to do it this way and you are not going

to check, I don't propose to discuss these instructions with one side. It is both or neither, so I am going to make it neither.

I have no right to urge you to do it, and if your policy is not to do it, and I can understand the position sympathetically, I am not going to urge it.

As Mr. Scott Stewart says, he submitted them, I have read the cases and will apply the law to them. I am trying to be fair in my selection.

By Mr. Stewart: We will put ourselves in your hands, your Honor.

By the Court: I am not going to talk to the Government either this morning.

By Mr. Barnett: May I make a statement about that, your Honor, to explain our position?

The defendants have submitted to you 103 instructions in a printed sequence, so that it is impossible for you as the instructions are submitted to take one out and put another one in, or rearrange it in any order whatsoever.

That is the reason why we submitted our instruc-
2146 tion, including and embodying among our instructions the instructions of theirs that we felt you would be warranted in giving, so that the instructions you read could be read as one continuous whole in sequence.

If you had separate instructions for both parties you could shift the instructions from one to another and insert them where they belong and read them in sequence, but the way they are tendered to you now, you can't do that. That is the reason we included among our instructions many of theirs that we felt were justified and in the sequence we thought that should be followed.

By the Court: Would you do this for me? Would you take your instructions and number them in the corner, the copies of your instructions?

By Mr. Barnett: You want us to indicate which of their instructions are included?

By the Court: That is right. It would take a week for me to sort them out.

By Mr. Barnett: We can do that, your Honor. I think we already have a rough list prepared like that.

By the Court: If you will indicate on your copies
2147 the number of their instructions respectively, numerically, I will sit down for an hour and go over them and see if they serve that purpose.

If they don't, I will read theirs.

By Mr. Barnett: I assume you intend to instruct the jury tomorrow morning? That was my impression.

By the Court: I don't assume anything. I don't know how long it will take. If the arguments do not take—let me ask you a question.

Again, I want to be very fair about it and I don't want to use my own judgment.

Is there any hardship or unfair advantage in making all the arguments and then instructing tomorrow morning?

By Mr. Green: I don't think we will be through with our arguments today, that is the only thing, your Honor.

By the Court: You will not be through?

By Mr. Green: I don't think so.

2148 By the Court: Let's put it the other way. If there is no advantage or there is nothing prejudicial in so far as the defendants are concerned in my at this time anticipating a completion of the arguments today, and then instructing tomorrow morning—would that be disagreeable or unfavorable?

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2149-2154 • • •

2155 * * * And Thereupon Mr. Barnett Addressed The Court And Jury In Argument On Behalf Of The Government.

* * *

2156-2159 * * *

2160 * * * May I have chart No. 1, please?

In telling you about this case, ladies and gentlemen, I would like first to discuss the income tax phases of the case and to assist me in doing that, we have a number of charts which you have seen previously. Then we have a couple of abbreviated charts, which I think 2161 will assist in the explanation.

First of all, we charge that during the calendar year 1948, certain taxes should have been paid and were not paid.

Now it is the Government's position that during the course of this trial we have presented evidence to you, in accordance as it is shown on that chart which is now before you, that Mr. DeLucia had a net income of $131,616.63—

By the Court: Pardon me, please. Mr. Stewart, do you want to take your chair over on the other side?

By Mr. Stewart: I am not interested.

By the Court: Mr. Green, do you want a chair?

By Mr. Green: No, I am here for a moment only, your Honor.

By Mr. Barnett: For that same year Mr. DeLucia filed an income tax return wherein he showed a loss on his return of $18,944.00.

We charge, and we contend that the evidence in this case shows, that the tax liability owed by Mr. DeLucia on that $131,000.00 of net income was $66,689.50, whereas on his return he showed taxes due of nothing, 2162 zero.

May I have the next chart, please?

2163 Similarly, with respect to the calendar year 1949.

The indictment charged Mr. DeLucia with evasion of income taxes and we say that on the basis of the evidence that has been presented in this court room, we have shown that Mr. DeLucia, during the calendar year 1949, had a net income of $34,002.89, whereas, on his return, he reported a red figure, a loss of $2,282.95.

By the same token, we contend that the evidence has shown that he owed a tax liability for that year of $8,947.76 whereas he reported a tax of zero.

Next chart, please.

Similarly, with respect to the calendar year 1950. The indictment charged the evasion of taxes and we contend that the evidence as presented in this court room has shown, for the calendar year 1950, Mr. DeLucia had a net income of $61,915.14 and on his return he reported a red figure again, a loss of $9,838.82.

Based on the computation of tax, the experts' computation of tax; based upon the net income of sixty-one thousand, the evidence shows that he owed to the Govern-

2164 ment a tax for this year of $23,754.84, whereas he showed on his return a tax due of nothing.

Now, what has been the defense to the claim that he has evaded or attempted to evade taxes on the income that he had during the years 1948 and 1949 and 1950?

We base, as you have seen from the evidence, we base the computation of income that he had in those years upon the expenditures that he made in those years on the theory that anything he had spent had to have been reported from him and if it had been received from other than nontaxable sources, it must have come from current income.

2165 What has been his defense to that charge? The only defense, the only lead, the only explanation that

has ever been given here on behalf of the taxpayer DeLucia with respect to 1948, 1949 and 1950 is that he had some money on hand at the beginning of the year.

Now, we set out in this case to show why that was not true. We set out first to show that he could not, could not have had that much money on hand at the end of 1943. We set out to show that by circumstantial evidence of his expenditures and his available resources during the years prior to 1943.

Now, first of all, we started with the period 1920 to 1933. That was the period after Mr. DeLucia came to this country. He came here in 1920. And, it was not until 1935 that he filed a return for the calendar year 1934.

Now, if you will notice from the chart, which is now before you, chart No. 4, we start with the year 1934 and continue through the year 1943.

In the lefthand column are the gross funds avail-
2166 able to Mr. DeLucia. In the next column are the expenditures. Those are the expenditures that were proven in this court room, that were proven in this court room without contest, many of them being stipulated to by the defense.

The last column on the right is the difference between those figures, which constitutes the possible cash on hand at the end of any given year.

You will notice that for the period 1934, to and including 1943, there is not a single year when the available or possible available cash on hand of Mr. DeLucia approaches $300,000.00. The most is the cash on hand at the year of 1941 when it is two hundred and thirty-one thousand—$231,236.00.

Now, let us examine why we start him out in 1934 with nothing except the reported income for that year.

In other words, we have got—we have assumed that he had no large bulk of cash on hand holding over from the 20's.

Mr. Stewart by innuendo in cross examining the agents on a couple of occasions asked if it was not a possi-
2167 bility that he could have had some sort of illegal income resulting from the 20's, I suppose bootlegging or something of that nature.

There has not been a scintilla of evidence introduced in this case that would tend to support that belief.

2168 Now, let me point to this with respect to his background and history, bringing us up to 1934:

We know that he came into this country in 1920. We know that he has made statements when he was admitted to the penitentiary at Atlanta—he made statements to Mr. Gibson which indicated what his previous employment had been.

He was employed as a theatre manager, an operator of a restaurant—nothing extraordinary. He indicated no extraordinary background whatsoever.

During that same period of time, if you recall, there was a witness on the stand named Mr. Grothe, who introduced a savings bank account of Mr. Paul DeLucia, which was opened in 1927 and, in that account, the greatest amount of money that was ever on hand was $4,500.

Now, have you noticed also, if you please, that on September 8, 1927, when Mr. Paul DeLucia was banking in that account, when he opened that account, his resi-
dence address was given to the bank as 917 Blue Island
Avenue in Chicago, Illinois—quite an unpretentious
2169 address, quite a modest address.

He has another address subsequently, on December 30, 1931, according to the bank record card, which was Government Exhibit No. 206, and he was desiding at 4312 West 22nd Street in Chicago, Illinois, again a modest residence, nothing particularly pretentious about it.

He shows no great evidence of wealth during those periods prior to 1934 and his history is consistent thereafter also.

For example, subsequently, subsequent to this 1931 date, he was residing in an apartment at 5300 West Jackson Boulevard. I assume it was a nice apartment. It is a nice neighborhood, but, there is nothing particularly pretentious about it.

In 1934, for the first time, he acquires title to real estate and that real estate is at Long Beach, Indiana, and he acquires it on a mortgage of $7,480 with a down payment of I think around $4,000.

That mortgage remains in existence and is paid off installment by installment.

The following year, 1935, he makes an improvement on the premises in Long Beach, Indiana. He buys a stoker and he buys it on time. It is a stoker which
2170 cost $1,180 and he buys that on time, which makes the total cost of the stoker, including interest, $1,356.76, as shown by Government Exhibit No. 120.

At the time that he makes the loan for that stoker, he has to give a credit statement to Mr. Harvey Frey. On that credit statement which is given in 1935, he indicates he is employed by himself in the World Playhouse, a theatre on Michigan Avenue, and that his annual income is $4,500. This is in 1935.

2171 In the following year 1936 he starts spending some money. He spends money for annuities for his children.

Now I would like you to notice this, ladies and gentlemen—may I have the next chart, please?

I would like you to notice how Mr. DeLucia's rise in standard of living is keyed into the extortion income which he received, or which the Government has always

contended that he received, for the period 1935 through 1940.

As I said, prior to 1935 he has made no substantial expenditures of any great consequence. In 1935, he begins to spend money, and that is the year when, according to the testimony of Mr. Ruggaber, based on the evidence of the extortion trial, he began to receive substantial sums of extortion money.

In that year he received extortion money over and above what was reported on his return of $44,000.00.

Again in 1936, as I said, he acquired insurance policies on behalf of his children, substantial insurance annuities. In 1936 also he builds a caretaker's house in
2172 Long Beach, Indiana.

In 1938 and 1939, he literally goes crazy spending money. He puts a $30,000.00 addition onto his Long Beach, Indiana, property. He puts an $18,000.00 pool on the back of his Long Beach, Indiana, property. He spends $25,000.00 for a new home in River Forest. He spends $30,000.00 to add an addition onto that new home in River Forest.

You can see that prior to the advent of the extortion money, Mr. DeLucia was living very modestly. But as the extortion money began to roll in, he began to spend money freely.

Mr. DeLucia was not a hoarder of money. He was not a man who saved money because he liked the color of long green bills, although he kept plenty of them on his person. He was a man who liked money for what money could do for him, and when he had money he set about to acquire beautiful possessions.

2173 He was a man with a fine architectural sense. He was a man with artistic tastes. He liked beautiful things, and he needed money to acquire those beautiful things.

So, he wasn't given to hiding money. He used money for the purpose for which money was intended, and that is to spend.

You have heard a great deal of controversy—perhaps not controversy, but a great deal of comment about that extortion income. Now Mr. Ruggaber, when he was on the stand, and his testimony is verified by what he has put in his report, indictated that the total extortion money receivable by Paul DeLucia for the period 1935 to 1940 was $404,894.13.

Mr. Ruggaber, in his analysis back in 1945 of the receipt of such income by Mr. Paul DeLucia, credited Mr. DeLucia with having reported a portion of that money. That money which was reported on Mr. DeLucia's returns under the heading of "Miscellaneous," which was not otherwise identified as to source, Mr. Ruggaber said could be the extortion money, and therefore we will allow him credit for that money having been reported on his return.

2174 Mr. Ruggaber never contended, and we have never contended, that Mr. DeLucia did not receive the $404,000. We do say, however, that during that period of time when his living standards were rising, his living standards were geared to the receipt of the extortion money, and that shows that his principal source of income was the extortion money that he was receiving during those years.

Now, Mr. DeLucia is the man who has always reported income on the expenditures basis, the same basis that we use in computing his income in this trial, and that basis is this: If you spend money and it is out in the open and the Government can find what you spend it for, the Government will know that you have had some income which results in that spending.

Mr. DeLucia has always reported on the expenditures basis. He has always prepared his returns on that basis. He told that to Ned Klein when he came in and made the audit on the 1938 and 1939 returns.

Mr. Bernstein, in presenting his analysis of Mr. DeLucia's 1941 and '42 returns and the 1943 return to Revenue Agent Armstrong, showed that Mr. DeLucia had reported his income on the expenditures theory.

2175 So Mr. DeLucia is not spending all of the extortion income that he is receiving during those years. He is spending substantial parts of it, but he is not spending all of it. Although he is a spender, he is not a spendthrift.

He doesn't spend every dime that comes into his pocket. He knows he needs money for various things a few months later or a year later. He is not a hoarder, but he doesn't spend it as fast as he gets it, although he does spend substantially.

2176 But he knows when he is spending money for acquiring assets, he knows that the Government can find real estate that has been purchased, as we did in this case. He knows when he made major additions through reputable contractors on his house, he knows that we will be able to locate such contractors and determine what he paid for it.

So what does he do? He reports on his income tax return enough income so that he can account for expenditures in a particular year in which he is reporting —at least, he thinks he can account for it. That is the entire pattern of his income tax filing history is filing on the expenditure basis.

Now I want to say a further word about that $404,000.00 of extortion money. We say that we have given Mr. DeLucia in our computations in this case full credit

for every dollar of extortion money that he could ever have received based upon the testimony at the extortion trial at New York. There is not a scintilla of evidence that he ever received any more money out of the extortion than the $404,000.00 that we have given him,
2177 even though Mr. Stewart attempted to draw that inference from the cross examination of Revenue Agent Ruggaber.

Mr. Ruggaber said that on the evidence that he had available from that extortion trial, Mr. DeLucia received two-ninths, two-ninths of the total of $1,800,000.00 that was paid out in extortion funds, and that two-ninths comes to $404,894.00.

It has never been admitted that Mr. DeLucia ever got that $404,000.00. Until Mr. Stewart in this court room attempted to get an inference that he could have received more of that extortion money than we have given him credit for, there has never been a suggestion that he got any more. There has never been a suggestion that he got as much.

Let's look at the record. After Mr. Ruggaber's examination of Mr. DeLucia, he prepared a report charging that he had received additional income in the amount of $227,000.00 for the several years involved.

The $227,000.00 is the difference between the $404,000.00 that we say he got and the $177,000.00 aggregate that he reported on his several returns during the years in which he was receiving extortion income.

2178 Mr. Ruggaber charged him with the tax on the additional income of $227,000. What did the defendant DeLucia do then? He filed a petition in the Tax Court challenging the accusation of the Government that he had received any of that extortion money.

He filed a petition with the Tax Court in which he denied that he had received any of the extortion money

and denied that he was obligated to pay a tax on the receipts of any such money.

He, Mr. DeLucia, signed that document upon his solemn oath, signed it and said:

> "Paul DeLucia, being duly sworn, says that he is the petitioner above named, that he has read the foregoing petition and is familiar with the statements contained therein, and the statements contained therein are true except those statements to be upon information and belief, and those he believes to be true."

Signed, "Paul DeLucia."

Mr. Stewart disregards this document as being
2179 a document prepared by a lawyer, and you know how lawyers are. Sometimes they say things that they can't prove. We will discard that for the moment.

The next time, in another proceedings in 1948, a document called a "Traverse" was filed. A traverse is a word which, in lawyer language, means denial.

In the body of that traverse appears the following language. The petitioner is Paul DeLucia.

> "Your petitioner states that your petitioner had nothing to do with the obtaining of this money nor did your petitioner receive any of it."

He is referring to the extortion payments by Bioff and Brown.

> "Your petitioner is not guilty of the charge made and by reason of some of the facts developed by the legislative committee including facts which your petitioner was unable to prove during the hearings, your petitioner states that his conviction rests upon perjured testimony."

2180 This might be called another lawyer's document, but it is signed two times by Paul DeLucia in pen and ink at the back, once attesting to the fact that he is Paul DeLucia and that this document is true.

That also is a lawyer's document. But if you recall, Congressman Clare Hoffman came into the court room and testified that he had conducted some sub-committee hearings out here in Chicago, and that Mr. Paul DeLucia appeared before him; that he was sworn upon his oath to tell the truth and that he, without any lawyer intervening, without any lawyer speaking for him, denied that he ever got any money from Willie Bioff. He denied he ever got any part of the extortion funds. He denied he ever got any of the money that was extorted from the unions as well as the movie producers. He denied he was guilty of the charge upon which he had been convicted.

Furthermore, he said that in 1946 when the settlement had been made on the taxes which were charged by Mr. Ruggaber, that the payment of the taxes had been made on his behalf by nameless and faceless friends
2181 to Mr. Bernstein, which friends he did not know, and the reason for it was because he did not have the money to pay the tax at that time.

2182 Denial No. 5 occurred in the testimony before the Kefauver Committee in 1950.

In 1950 he said—he used the—I don't think he used the language "bum rapped,"—he had been convicted and had not been guilty. He said he had nothing to do with the extortion money. Again, he was not—there was no lawyer between him and the interrogator.

It was Mr. DeLucia himself who was making the statements and he was making those statements under oath.

Shortly after the Committee hearings of Kefauver, Mr. DeLucia appeared before Special Agent Richard O'Hanlon. He appeared with his attorney Mr. Bernstein and he gave a statement to Mr. O'Hanlon in which he stated that in 1946 he had told Mr. Bernstein to sell the farm; he didn't have the money to pay the taxes which had been charged against him.

On his way out, Mr. O'Hanlon asked him if he had no money at that time, in that period of time, how did his wife live, while he was in the penitentiary? And he said she lived off the farm.

The farm has reported a net loss in every year,
2183 1948, 1949, 1950.

Again, when Mr. DeLucia was committed to Atlanta prison, he was asked by Mr. Gibson who took the stand and testified here, what his resources were and he listed them. He said, "I have a home in River Forest."

Mr. Gibson said, "Anything else?"

He said, "I have a summer home at Long Beach, Indiana."

Mr. Gibson said, "Anything else?"

He said, "I have a farm in Kendall County, Illinois."

Mr. Gibson said, "Anything else?"

He said, "That farm is subject to a mortgage."

Mr. Gibson said, "Anything else?"

That was the end of the line. He never told him about having any money in the attic or anything like that, whatsoever.

Six times under oath Mr. DeLucia has denied that he had any part in the extortion money, six times under oath.

The closest we ever come to having an admission by
him that he received any part of the extortion money
2184 is when Mr. Bernstein went into Joseph B. King's
office, the regional counsel of the Internal Revenue, and submitted two financial schedules.

At that time, Mr. King was permitted by Mr. Bernstein to copy the financial schedules which Mr. Bernstein had shown Mr. King and to which he had alluded.

One of those schedules was a document prepared by Mr. Bernstein which Mr. Bernstein said would show that

Mr. DeLucia had available resources at the beginning of 1948, from which these expenditures could have come, and, that document within its body states "two-ninths additional income, four hundred and four thousand eight hundred and ninety-four—and he has nine cents and we have thirteen cents. He wouldn't call it extortion money. He said "Two-ninths additional income" though the figure is practically identical.

2185 That is as close as we ever come to hearing that Mr. DeLucia had received any of this extortion money.

How is it possible for Mr. Stewart now to suggest that he would have gotten considerably more than the four hundred and four thousand that we credit him with having received?

I think we have shown circumstantially, ladies and gentlemen, giving Mr. DeLucia full credit for every dollar that he could have received and charging him with the expenditure of every dollar that we can prove that he spent, that he could not have had on hand in December, 1943, more than one hundred and fifty-five thousand dollars in available cash.

Let us turn, for a few moments, to the $300,000 story itself.

Where did it first arise and how was it first told? It was first told in the Kefauver Committee in September of 1950 and it came out in this fashion:

They had talked about the fact that these nameless men had paid the money, on behalf of Paul, or
2186 Louis, for the tax payment in 1946 and they had talked about the expenditures of Mr. DeLucia, during the years 1948, 1949 and 1950, so far that year, and they asked him where he got the money that he had. They asked how much he had.

He said, "$300,000."

They asked him how that came about, and he made some explanation. "I don't recall," he said. "I was mixed up in that."

He said, "What happened was I had some in the house and I had some in the vault and I went to the vault and I brought it to the house," before he went away to the penitentiary.

That is the first time that story was ever told and that is the manner in which it was told.

"I had some in the house and I had some in the vault and I went to the vault and I brought it to the house."

He did that before he went away to jail in January of 1944.

You recall the witness Shirley Torrey Dardis, secretary to Joseph Imburgio Bulger during that trial. After the trial was over, she returned immediately to 2187 Chicago and she arrived in Chicago on Christmas Eve. Mr. DeLucia, Mr. Bulger, could not have arrived in Chicago any earlier than Mrs. Dardis.

When did he have an opportunity to go to the vault and take it out and bring it to the house? When did he have an opportunity? Christmas Day?

It was Christmas Day that Joseph Bulger went to the house and allegedly went through this performance in the attic.

Bank vaults aren't ordinarily open on Christmas Day. I say to you that he did not got to any vault whatsoever and he didn't take anything out of the vault and bring it to the house, and why?

I have a great respect for Mr. DeLucia's intelligence. I think he knows what he is doing at all times.

In May of 1943 he sustained a $20,000 fire loss at his Long Beach, Indiana property. Mr. Rutledge, the insurance adjuster, testified that he had examined the premises and the house was one-third destroyed.

Is a man of Mr. DeLucia's intelligence, seven
2188 months thereafter, going to take $300,000 and stick it in the attic of a house, knowing that his residence was subject to a fire, just as his residence in Long Beach was subject to a fire?

Is a man like Mr. DeLucia going to take money out of a vault in a bank where it is safe and transfer it to a tin box in his house where it is subject to the onslaught of fire, of lightning and possibly of theft?

I don't think that Mr. DeLucia would operate that way.

2189 Consider the position of Mr. Bulger, attorney, counsellor at law, insurance advisor, sitting up in that bed room and suggesting to Mr. DeLucia that they stick that money up in the attic. He doesn't suggest to him that they take it down and open another vault if he is not satisfied with the vault he has it in, but, that they put it in the attic.

Instead of the story that Bulger has told before Joseph B. King and before the grand jury—and, one of the reasons why Mr. DeLucia wanted Joseph Bulger to hold the money and not his wife, was because he didn't trust his wife.

There is not a scintilla of evidence in this record that there was ever any marital discord in the DeLucia family. As a matter of fact, to do Mr. DeLucia his due, he happens to be a model husband and father in so far as his family is concerned. Married in 1927—they had three children who are grown.

There has never been a suggestion that there was any unhappiness in so far as marital relations were concerned. Not only that, but prior to 1943 and through 1943, the record shows that there was a vault at the
2190 First National Bank upon which the ones who were permitted to enter were Nancy DeLucia and Paul

DeLucia. That was a vault, if you recall, where, as the extortion money increased, the size of that bank vault increased. Every couple of years they doubed the size of the vault.

In 1943 they still held that vault and Mrs. DeLucia was still a proper entrant to the vault; if there was any doubt, she could always go to that vault.

Now, all of a sudden, why should he take everything out of that vault and say he is going to hide it from his wife? The story is absolutely preposterous.

Consider this: He didn't trust his wife says Mr. Bulger and he wanted to take care of his children.

I believe that is true, but I believe that Mr. DeLucia wants to take care of his children and I believe that he knows how to take care of his children and you don't take care of your children by hiding a tin box in an attic.

He wanted to take care of the children and if he
2191 was disturbed about what his wife might do with his assets, he himself had already decided how to take care of his children by buying insurance annuities and he could have bought more insurance annuities if he wanted to provide for their financial welfare subsequently.

Suppose this were to happen: Suppose this trusted friend and confidant, Joseph Imburgio Bulger, holding the one and only available key to that tin box in the attic, suppose he were to die while Paul was in prison? Suppose Paul were to die while he was in prison? There would be no one who would know about that $300,000.00. There would be no one to give the money to the children to take care of their welfare in subsequent years. The house might be sold. The money might never been discovered until a generation or two later when the house was being torn down and somebody who was not

a friend and not an attorney of Paul DeLucia might then be an unwitting heir to the $300,000.00.

Don't you think that Paul DeLucia has the intelligence to consider those various possibilities?

2192 Mr. Bulger—don't you thing he has the intelligence to consider those possibilities?

Ladies and gentlemen, the net result of that whole story in this analysis, as I give to you, I think, shows there was never a dollar in that attic. Think of this preposterous story, two grown intelligent men, sitting around in an attic counting thousand dollar bills.

Ladies and gentlemen, this never happened and I think the evidence in the case shows clearly and convincingly that it never happened.

Now, we come to the point in this case where I would like to discuss the 1943 to 1947 expenditures.

2193 During 1944, 1945 and 1946 and during the greater portion of 1947, Paul DeLucia was in prison but he had expenses, none the less.

He had expenses of his family. Now, Mrs. DeLucia never, the evidence shows, earned a dollar of income in her life. She might have gotten stock dividends, some minor amount, but she never earned a dollar income.

She is claimed as a dependent on every return that Paul DeLucia filed, except those returns which were joint returns, and then she is shown as his spouse, non-income-earning spouse.

Furthermore, if you recall the testimony of Mr. Gibson on the stand, when Paul went to prison he told Mr. Gibson in response to Mr. Gibson's question, "I have left my wife sufficient money to get along with, to get along on."

As a result, we are entitled to claim that the expenditures made by the DeLucia family that we are able to

establish during the period 1943 to 1947 inclusive, were expenditures made on behalf of Paul DeLucia, and reduce his cash available funds down to $48,697 at the
2194 end of 1947, the beginning of 1948.

On this chart that appears before you, at the bottom it says "Cash on hand, December 31, 1943, $155,637.53."

The reason for that is that that is a carry-over from the chart which ended in 1943.

2195 $155,000.00 was on hand at the end of 1943, and then, according to this chart, at the end of 1947 we have $48,697.00 on hand. That is the result of continued expenditures on behalf of the DeLucia family, there being no substantial income coming in during the years that Paul was in the penitentiary.

To graphically point out to you exactly what has happened in this case with respect to cash on hand, we have a chart there that shows the cash on hand that the Government allowed Paul DeLucia in this case in 1938, $173,076.00.

During the same period, according to his own records as submitted to Ned Klein, he claimed cash on hand at the end of that year of only $10,811.00.

In 1939 we allow him $180,000.00 possible cash. According to his own records, he claimed only $18,000.00 cash.

1942 we allow him available cash of $200,000.00 On the records submitted by Mr. Bernstein to Revenue Agent Armstrong, he showed available funds on hand of only $2,422.00.

2196 Then we come down to 1943. At the end of 1943, according to our computations, he could have had $155,000.00 on hand. But according to the work sheets that Gene Bernstein submitted to Revenue Agent Armstrong, he could have had only $2,324.00 on hand, of

which $200.00 was in currency and $2,124.00 was in the bank.

At the end of 1947 we credit him with having on hand $48,697.00, and that is the point where, according to the oral statements of DeLucia and Bulger, he had $300,000.00 in the attic.

Now, starting out with $48,000.00 in 1948, we have made, or the agents have made, and the evidence in this court room shows, that they have gone to great lengths to eliminate the possibility that Mr. DeLucia would have had available for expenditures during the years 1948, '49 and '50 income from sources that we had not accounted for in previous periods which might be considered to be non-taxable to him during the tax years in 1948, 1949 and 1950, the theory being this:

2197 We give him cash on hand of $48,000. In 1948 he can spend $48,000 before he receives any income at all. Beyond $48,000, though, anything that he spends must be income unless it is explainable by something other than the $48,000 cash on hand that we had at the beginning.

A loan would explain it. He claims that he had a loan. The record shows that he placed a mortgage on his Long Beach property for $40,000 with one Hugo Bennett in 1948. I will touch on that later.

The record shows that he had a $11,000 mortgage during that year 1948 also, or he had a loan at the bank of $11,000. He also borrowed another $40,000, according to the mortgage records, from Hugo Bennett in 1950.

Now legitimate loans constitute a source of funds which are not taxable to the recipient upon the returns. It is perfectly obvious because he will have to repay those loans at another date. It is not really income to him. It is money that he is entrusted with to use for a limited

period of time subject to the right of a lender to collect it back at a later date.

2198 So the agents in this case, as they are required to do in a case of this nature, have made an extensive, a back-breaking investigation to determine what possible assets could have been accumulated by Mr. DeLucia up to the end of 1947.

I might say that the only lead the Government ever got in this case was the story that he had $300,000 in the attic. The agents in this case, in order to run down all possible leads, investigated Probate records. They investigated state and gift tax records of the Internal Revenue Service. They investigated land title records. They searched for stock and bond holdings. They searched bank accounts. They contacted insurance companies.

They even went so far as to dig up a statement made by Nancy DeLucia in 1945 to a deputy collector in this building.

As a result of the investigation, we feel certain that we have plugged up all possibilities of other money being available to Mr. DeLucia at the end of 1947 over and above the $48,000 that we have allowed him.

2199 Now, if he spends in 1948 money over and above that $48,000, it has either got to be accountable for by loans or by income.

Let's take a look at the expenditures in 1948, 1949 and 1950.

In 1948, Mr. DeLucia spent—and the spending of this money is listed on his parole reports, which are here in evidence and which will go to the jury room with you—he spent $217,107.27.

The Government gave him credit in our computations from the stand here of having $48,697 cash on hand at the beginning of the period. We gave him credit for a loan at the First State Bank, Forest Park, a loan of

$11,000. We gave him credit for gross farm receipts that were indicated upon his return—we didn't have any net farm receipts because the farm operated at a loss, but we gave him credit for the gross of $30,000.

The net expenditures that he then had, and by "net" I mean expenditures that could not be accounted for by income other than earned income or taxable income during that year, the net expenditures were $126,776.

2200 At the same time we have to add to that the bank balance at the end of the year 1948, which is $9600.00, and he has $136,000.00 of excess expenditures over funds available. The net result, after giving him the benefit of deductions, is that he had taxable net income of $131,616.63 in that year 1948.

We have not given him credit for having received a mortgage of $40,000.00 from Hugo Bennett in that year, and I will discuss that shortly.

In 1949 he spent, according to his own parole reports, according to the stipulation that is here in evidence, $120,933.14, giving him credit for any available funds the same as we did in 1948. He had net income at the end of that year, net taxable income, of $34,002.00.

In 1950, again, based on his parole reports, he actually spent $118,770.00, and we have given him credit for funds available which brings down his net expenditures that can be accountable for out of nothing else but taxable income, brings those expenditures down to a net income figure of $61,915.14.

Now, as I say, we have given him credit for every

2201 possible item of income or resources or assets that he could have had at the beginning of the period. We have given him credit for every legitimate loan that he obtained or loan that we could not prove was illegitimate in the years 1948, 1949 and 1950. We have not

given him credit for the alleged Hugo Bennett mortgages.

Now, our reasons therefor: I would like to point this out as an aside. What kind of operation is this, where a man in one breath says that he has $300,000.00 stored in a tin box in his attic, and in the next breath he has got to borrow $40,000.00 from a friend?

About the mortgage itself, Municipal Court Judge Joseph Butler testified from the stand that a long time schoolmate acquaintance of his, Hugo Bennett, came to him and said I want to loan some money to Paul DeLucia and Judge Bennett or Lawyer Bennett did not know who he was. He said I want everything legal. I want the papers drawn up. I want everything legal. But it is a mortgage for $40,000.00 on which there is no principal and no interest payment due for five years.

That is a pretty nice mortgage.

2202 Consider the background of Hugo Bennett. He is an official of Sportsman's Park race track in Chicago, Illinois.

The witness Wilczak, the electrical contractor, formerly employed by Alex Ponzio, the son-in-law of Paul DeLucia, testified to the influence that Paul DeLucia obviously exercised at Sportsman's Park race track. He testified to having seen Hugo Bennett down on the farm at what appeared to be a meeting of men in one room and women gathered in another.

Then there was the uncontradicted and un-cross-examined testimony of George Frederick Dick, III, the banker from Bloomington, Illinois, who said that when he told Mr. DeLucia that he had discovered a second mortgage on the Kendall County farm, the time that the farm was being sold by DeLucia, and that they would have to have a release on that mortgage because the purchaser desired to acquire the property mortgage free,

Paul DeLucia said there will be no trouble, it is a friend; I don't owe it anyway.

2203 Who knows better whether he owes it or not than Paul DeLucia? I think that is sufficient basis for you and us concluding that the Hugo Bennett loans were nothing.

Let's explore the possible reasons why the loans were made, why they were made of record, why everything was made legal, or at least to look legal.

Paul DeLucia has reported money on the expenditure basis all his life. He knows more about the expenditure basis of reporting income than I do.

He knows that in the year when he is spending money like a drunken sailor, that if he makes a loan, that means so much of that loan is concerned, that money can be considered to be non-taxable. It is perfectly obvious. It goes back to 1938 and '39.

In 1938 and '39, he was spending money wildly. He was building additions on the Long Beach property, buying and building additions on the River Forest property. He was spending money so rapidly that he knew that it was obvious that he was spending money and he had to do something about it.

He wasn't reporting enough on his returns. So,

2204 what does he do? He puts a $30,000 mortgage on the River Forest house with a fellow named Steve Matalone. That was a mortgage on which he stopped paying interest in 1942. He never paid another dime of interest and never paid anything on the principal until 1951, at which time he sold the Kendall County farm. That mortgage itself was a very suspicious operation.

We have given him credit for having had those funds from a non-taxable source. But it shows the awareness

that he had and has of the use of loan money in a currently taxable year.

That is the reason why he goes to Hugo Bennett in 1948. He is spending money too fast.

On his parole reports month by month by month, he must tell the parole officer how much he is spending and must tell him where he gets it. The only thing he says on there is "I get it from previously acquired funds."

He knows that he has got to have a ready explanation for some of these funds, so he makes a loan with Hugo Bennett. What better explanation can you have than that you made a mortgage with a friend?

2205 Consider his discussion of the 1950 mortgage when inquiry was made about that before the Kefauver Committee. They asked him about his $300,000.00. They asked him why, why would he have to borrow $40,000.00 from a man like Hugo Bennett?

One of his responses that I recall so vividly was this: "I was told when I was a boy to always have cash money on hand."

Whether you need it or not, you go out and borrow money, according to that analysis. But in 1950 he tells the Kefauver Committee that all he has is $40,000.00 left now, out of everything, borrowed and previously acquired funds, and it just happens that he has recently borrowed $40,000.00 from Hugo Bennett.

That, incidentally, is not at all consistent with Mr. Bernstein's cash analysis as submitted to Mr. King. Mr. Bernstein finds, even by his distorted figures, that Mr. DeLucia had at least $51,000.00 left on hand at the end of 1950.

Take a look at this, however, also. Mr. DeLucia was under investigation, that is to say, he was being in-

terrogated by the Kefauver Committee in 1950, and
2206 immediately thereafter, if you examine his parole reports, the spending on those parole reports drops miraculously. When he knows somebody is looking at what he is doing, he stops spending.

I have talked to you a good deal, I think, about the question of the opening cash on hand. I have talked to you about the reason why in our computations we have not allowed the Hugo Bennett loans.

I think that our evidence establishes a very tight starting point. I think it establishes an unimpeachable starting point. If you recall, the examination of our agents was very limited, the cross examination, I mean, and there has been no effort that I could determine or detect which would tend to bring out the possibility of any areas that we have not searched or areas that we have not covered.

2207 And now, I would like to talk to you about this problem—it is not really a problem because if we have a tight starting point, as I think we have, it isn't necessary to do anything further: Once you show the expenditures, you are entitled to infer that those expenditures are from income received in the year in which the expenditures were made.

We have some evidence of source in this case. We have some evidence to show that Mr. DeLucia was gainfully occupied in 1948, in 1949 and in 1950.

Let me start with this: In 1948—pardon me. In September of 1947, I believe is the date that he opened a bank account in Forest Park, Illinois, he started dumping money into that account, currency—thousand dollar bills; in September, 1947, $6,000, currency; January 6, 1948, $2,500.00 in currency; March 2, 1948, $5,000 currency.

It looks like March 15, 1948, $5,000 currency. March 30, 1948, $11,000, proceeds of a note—that is that mortgage we credited him with in 1948, that is a personal loan at the bank, $9,000 cash—making a total deposit of $20,000 on that date.

2208 April 16th, currency, $5,000. May 4th, a small deposit of $53.00.

May 6th, a check of $10,000.

There is another one. I can't read the date on it. It is in 1948, a check of $3,000.

May 5th, May 25, 1948, currency, $10,000. June 4, 1948, currency, $5,000.

I won't read any more of these, ladies and gentlemen. It goes on and on, and, during the course of the year, he drops about $100,000 currency into that account.

That gives every evidence of being money that he was receiving, from time to time, during the year 1948. That isn't the action of a man who goes up into an attic and pulls out his tin box and dumps it into the bank.

So from time to time, as the money comes in, he makes deposits in the bank, as necessary to write checks against his account, always in currency, nice round sums.

2209 Now, you may recall when we were reading the Kefauver testimony, that story about how the 1946 setflement was made, whereby Eugene Bernstein sat in his office and received money for Paul and money for Louie on his desk; subsequently made the payment.

Mr. DeLucia was asked if he knew who those people were, and he said, "No." Had he made any effort to find them? He said, "No."

Why? Because he was on parole and his parole officers had advised him that he could not associate with people whom he had previously associated with; that that would be considered a parole violation and, as a

result, he could not look those people up; he would do that after his parole was over, but right now, he couldn't do it.

You may remember also, in that connection, that when Mr. Bernstein appeared on behalf of Mr. DeLucia, before Joseph B. King, among other things, he explained to Mr. King that Mr. DeLucia could not have had any business operations, could not have had any taxable income during 1948, 1949 and 1950 because he was on parole and a man who is on parole is watched and cannot
2210 associate with unsavory characters who might be the source to him of illegal gains and income.

But, you recall the testimony of the witness Winkleblack. Not only did Mr. DeLucia associate with these people when he was on parole but they met with him in prison, Francis Curry, Tony Accardo, who came down at the prison to consult with the boss about the operations of the machines.

After he was on parole, he met with Francis Curry and Tony Accardo, Hugo Bennett and others whose names we do not know met with him at his farm house in Kendall County, Illinois, met with him in his home in River Forest, Illinois, used influence to obtain work for his son-in-law, wiring the bookies in Chicago and Cook County, electrical wiring of booths, a Sportsman's Park man.

Another bit of evidence concerning source, he reports on his income tax returns for 1935 through 1943 various sums of miscellaneous income.

He is, at one time, asked by Revenue Agent Klein what the source of miscellaneous income is and he says, "Gambling, I gamble."

2211 Revenue Agent Klein and Revenue Agent Ruggaber later told us that the word "miscellaneous" and

the word "gambling" are euphonisms, they are cover words, they are words used to describe income from illegal sources that the maker of the return does not care to further describe. He does not want to let the actual source be known. Do you remember that? Do you remember how Mr. DeLucia reported in the years 1935 to 1943 this miscellaneous income?

2212 We say the great bulk of that miscellaneous income resulted from the extortion money that he received during that period of time.

But, now, look at the returns for the years 1945 through 1954. Stop with 1953.

The returns for 1945 through 1953, those years; Mr. DeLucia is on parole—pardon me. From 1945 to 1947 he is in prison but from 1947 through 1953 he is on parole.

You do not find a dollar of this miscellaneous income during that period of time.

In March of 1954 he gets off parole. He is a free man again. Now he begins to report income in the customary $70,000 figure from "Personal gambling at the track."

That is another euphemism, "Personal gambling at the track."

"Personal gambling at the track" in the State of Illinois is not illegal but I doubt if Mr. DeLucia was any better able to pick the horses at the track than any one of us and I doubt if any one of us could come anywhere near making, year in and year out, $70,000 a year at

2213 the track from personal gambling.

By the Court: Can you stop here and let the jurors go?

By Mr. Barnett: I guess there will be a little bit more, your Honor.

By the Court: All right.

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2214-2215 * * *

2216 * * * And Thereupon Mr. Barnett Further Addressed The Court And Jury In Argument On Behalf Of The Government.

By Mr. Barnett: Good afternoon, ladies and gentlemen.

By the Court: I want to say this, Mr. Barnett. You may sit down, if you wish, you have a cold, because I have authorized Mr. Stewart to do the same thing if he wants to, and he indicated he would. So if you wish to sit down, you may do so.

By Mr. Barnett: Thank you very much, your Honor. I feel a little more comfortable standing, though.

2217 At the recess, ladies and gentlemen, according to my notes, we were discussing inferences of source. You recall, to sum it up in a brief minute or two, we talked about the testimony of the witness Winkleblack that down in prison Mr. DeLucia was visited by Accardo and Curry concerning business interests.

Then back in Chicago, the witness Wilczak testified to the influence of Paul DeLucia in getting contracts in connection with Sportsman's Park and various bookies.

Mr. DeLucia's returns before and after the parole period show income from sources such as gambling or miscellaneous.

These things, I believe, lead to a fair inference that Mr. DeLucia while he was on parole never ceased whatever the activities were that produced the income for him prior to 1944, and he came out in the open on his returns with it after he was released from parole.

2218 But I don't think for a minute that he abandoned his old associates while he was on parole and then took up with them again after he came off parole. I think the inference is clear that his association re-

mained the same throughout the period he was on parole, and he still had available to himself the same source of income, whatever that may be, that he had prior to the time he went away to the penitentiary.

2219 Now, I think I mentioned to you that if the Government is in a position to show a possible likely source of income on the part of a taxpayer who is spending money over and above what he reports on his return, then we are entitled to infer the money that is spent over and above that reported on his return, is unreported income in that year because there is a source from which it could have been obtained.

There is an alternative method of proof and that is, if you block out all non-taxable receipts, such as we have done in this case, then you, by that alternative method, show the unreported income or, rather, that the expenditures in that year must have been derived from an income producing source rather than from a non-taxable source, or, rather than from cash on hand in the beginning of the period.

We, I think, have done both things in this case, both things.

I think that his Honor will instruct you that if you find in either event—if you find that we have established source or if you find that we have blocked off in

2220 the beginning of the period all non-taxable receipts that would have been available to him during the taxable period involved, in either event, you may find the disbursements he made during the years 1948, 1949 and 1950 were the result of taxable income received by him during those years, which income was not reported on his returns for any of those years.

He even reported a loss on his returns during each of those years.

He reported a loss on each return for 1948, 1949 and 1950, despite making large expenditures.

It is inconceivable that a man would be spending his capital, spending his capital, having no available income, but spending his capital in those large sums that this man was spending them during the years 1948, 1949 and 1950. He had to have a source of income. He couldn't possibly have been spending everything that he saved up during those years without having income coming at the same time.

There is one thing that I didn't mention this morn-
2221 ing with respect to the likelihood of Mr. DeLucia having the money on hand any different than what we have attributed to him.

You recall that Mr. DeLucia purchased a number of insurance policies throughout his lifetime. In 1938, among other policies purchased, he purchased one on his own life which called for the payment of a $2,000.00 annual premium. In 1943, by the terms of the policy he didn't pay any more premiums. The policy was converted into a paid-up policy in 1943.

In 1944 the policy of himself and his wife in the Italo American Union became paid-up policies by virtue of the clause in the policy that made it paid up if premium payment stopped, and premium payments stopped.

In 1946, by virtue of the automatic loan provisions in the policies with the Northwestern Life Insurance Company, the premiums were paid out of the cash surrender reserve value in the policy and it was treated as a loan by the insurance company and he permitted those payments to be made that way subsequently until 1949 and 1950.

2222 It wasn't until 1951, after he had sold the farm at Kendall County, that all of his policies were restored to their regular coverage and their regular payment of premiums.

That's all I want to say for the present, with respect to the attempted evasion of income taxes in the years 1948, 1949 and 1950 on the part of Paul DeLucia.

That refers to the first three counts of the indictment.

I would like now to talk for a few minutes about the last count of the indictment, the conspiracy count.

That count of the indictment charges:

> "Paul DeLucia and Joseph Imburgio Bulger conspired together to make false statements in a matter within the jurisdiction of the Treasury Department."

And, of course, you know so well by now that the false statements they are accused of having conspired to make, were the false statements concerning the $300,000 in the attic. If that statement is false, and there 2223 was no $300,000 in the attic, nobody knows it better than Joseph Imburgio Bulger.

In his opening statement, Mr. Green said that the story of Joseph Imburgio Bulger was a real American story. He said that the evidence would show that Joseph Imburgio Bulger, by the time he was 32 years of age, had amassed, by his own efforts, nearly a million dollars.

When you amass a million dollars by your own efforts, you amass it by virtue of earning income that is taxable when you receive it.

What did the evidence show? What did the evidence show? Mr. Gaynor, the insurance general agent, testified that he had known Joseph Bulger from 1923. In that year Joseph Bulger was 23 years of age. And, that he had known him as a teller in the Prairie State Bank, I believe it was. But, at any rate, he was a teller in a bank closed in the depression year, 1932.

The records of the District Direct of Internal Revenue here showed that while Mr. Bulger was employed by the bank as a teller, he was filing income tax returns, income tax returns that, in the language of the Bureau, are

2224 called "N.I." returns, income tax returns that do not reflect the receipt of enough income to require the payment of a tax.

He didn't file a return that was taxable until 1935—a man who was nearly a millionaire by the time he was age 32, and, he was age 32 in 1932.

Let us go to what we have shown to be—we are not sure that it is the first association between Paul DeLucia and Joseph Imburgio Bulger, but, at least, it is the first association that we have been able to trace in this court room.

2225 That association, as far as we know, starts with the founding of the Italian Village at the Century of Progress in 1934.

You may recall the testimony of Mr. Hugh Garden, the 84 year old architect. He testified that in the early part of 1934 he conceived the idea of building an Italian Village. He drew the plans and sketches for the Italian Village. He went to the Italian consulate to obtain backing for the building of the Italian Village. He went to the World's Fair authorities and procured an option on a portion of the Fair upon which he could build such a village.

Subsequently he was approached, he received a telephone call, and then he held a meeting at a restaurant with men, several men, many men. They had several meetings. He named some names. A quiet but important member of that group was the man then known as Paul Salvi, now known as Paul DeLucia. Another member of that group was the man then known as Joseph Imburgio, now known as Joseph Imburgio Bulger.

Joseph Imburgio, at that time, Mr. Garden said,
2226 was the businessman; the front for the operation.

But when he wanted money to pay contractors, who did he call? Not the president. He called Paul, and

the next morning Paul would be in and the money would be on the desk in long green bills, $5,000.00, $10,000.00, $18,000.00, in thousand dollar bills, it would be on his desk, and he would relay the money to the contractors who were requiring the payment.

Mr. Garden testified that the cost of construction of that building, rather that village, at the Fair, was between $180,000.00—I think he said $180,000.00 even.

The books of Schmidt, Garden & Erikson Company, which are here in evidence, indicate that the total construction of that village—I am talking about these books plus the subsequent books that were shown in the bankruptcy—showed that the actual total cost of the Italian Village approximated $190,000.00.

2227 They also show, and as Mr. Garden testified, that not all of the cost of the building funneled through Schmidt, Garden & Erikson. Part of the cost, a little better than half, was paid for by the group, this group of persons who were organizing this venture, paid by them on their own behalf to outside suppliers, and they didn't clear through the architect's office.

The books of Schmidt, Garden & Erikson show that approximately $90,000 cleared through the office of Mr. Garden by the hand of Paul Salvi, now DeLucia, dropping it on Mr. Garden's desk—$90,000.

Then you recall that we introduced the evidence concerning the bankruptcy of the Italian Village, showed the bankruptcy file. There are a couple of reasons for introducing the bankruptcy file. One of the reasons is this: Paul DeLucia apparently handled $90,000 in the year 1934. The bankruptcy file proves conclusively that he didn't get any of that money back. He didn't get any of that money back. It was a complete flop, a total loss

2228 We don't know whose mony that $90,000 was. We don't know how much, if any of it, belonged to Paul

DeLucia. But whatever it is, it is money that went down the drain in that bankruptcy proceeding, and it is money that was not subsequently available to him for any purpose and could not have become a part of his cash on hand in any of these years that we have treated.

That is one purpose for showing you the matter of the Italian Village bankruptcy. There is something else involved there, though.

Joseph Imburgio was the president of the Italian Village and Joseph Imburgio was questioned in the bankruptcy proceedings by an attorney named Pennish.

In that questioning Mr. Pennish was attempting to find out from him where a certain $90,000 came from. He had an explanation for it. It was broken up into two parts, $45,000 and $45,000.

He said that he got one $45,000 in currency from a man named Edward O'Hare. Who is Edward O'Hare? An official of the Sportsman's Park Race Track.

2229 He said he got $45,000 from Edward O'Hare, and if you listened to the questions and answers in which that story was given, it was very peculiar. First he said Edward O'Hare came in and gave him the money at the bank. Then he said he wasn't there when Edward O'Hare came in with the money at the bank. Then he said the money was left by Edward O'Hare at the bank and given to him, Imburgio, by a man named Spring at the bank.

That was one $45,000. What about the other $45,000 in another story about money in a box? He said, "It was my money; I am a man of means. It was my money."

He was asked if he kept it in a bank, and he said, "No, I kept it in a box. I had that $43,000 in a box, and I just took it out of the box and I fed it into the bank account of the Italian Village—" no, I don't think he even fed it into the bank account.

2230 Now, there is something else about that. Joseph Imburgio was questioned at some length by Mr. Pennish about other people who had interest in the Italian Village. He said there were no other people that had an interest in the Italian Village. The only interests were those that were of record, either the creditors or the officers or the stockholders of the Italian Village. Paul Salvi Ricca DeLucia's name does not appear any place on the record of the Italian Village or in the bankruptcy proceedings whatsoever.

Did Paul have an interest in that Italian Village? Was Joseph Imburgio covering for Paul in the Italian Village?

You may recall that in the 1957 grand jury proceedings, I asked Mr. Bulger what he knew about the Italian Village. When we started out, I thought we were talking about a restaurant, and he turned it into the Italian Village at the World's Fair, which was correct.

He told us nothing about Paul DeLucia being interested in the Italian Village at the World's Fair in 1934.

2231 He, in that connection, said that between the years 1934 to 1939, his contact with Mr. DeLucia was in the sale of insurance.

Incidentally, in that connection, he being an insurance man, sitting up in that attic counting that $300,000.00, he knew what insurance Paul DeLucia had on that house on Lathrop Avenue in River Forest. He had a total of $31,000.00 in insurance on that house at the end of 1943, and at that time and place he had an investment in that house, a cost investment of more than $68,000.00. He had the house insured for less than half of its actual cost to him.

The attorney, the insurance counsellor, is going to let him put a box containing $300,000.00 in an attic in a house that is only half insured?

At any rate, getting back to the association between Paul DeLucia and Joseph Imburgio Bulger, after the bankruptcy proceeding, as far as we are able to learn, nothing much of an exceptional nature occurred in the relationship between the two men.

During that time Mr. Imburgio changed his name to Bulger and went to law school nights so that he
2232 would be better able to serve the interests by whom he was employed. Then in 1943, the extortion indictment is returned, and then we see Joseph Imburgio Bulger, the millionaire bank teller, the insurance counsellor, the lawyer, running around Chicago and New York with a satchel full of money, paying bail bonds, paying for collateral on bonds, all in currency—the bag man.

I pointed those things out to you, ladies and gentlemen, to show the close association between the two men in the years prior to the time when the indictment—when the conspiracy, as it is charged in the indictment, began.

It is charged in the indictment that the conspiracy began in 1950 and we have talked about their association prior to 1950. Of course, that association doesn't prove that they conspired in 1950, but it does show something about their state of mind, about their intent, about what they might be inclined to do for one another.

2233 Now, what is the sequence of events concerning the conspiracy as charged in the last count of the indictment?

In September, 1950, Paul DeLucia appears before Kefauver and he says at that time, "I have $300,000 in the bank," when he came out of prison—not in the bank, "in the house."

That is the time he said, "Before going to prison, I went to the box, I went to the vault, and I took some out and I had some at home and I put it together, in the house."

On September 1, 1954, Paul DeLucia, Scott Stewart, Eugene Bernstein came into the Treasury Department and they appeared before Thomas M. Smith, Richard Stonesifer and John Scholz, and, in effect, what they said at that time and place was, "We stand on our story as told to the Kefauver Committee."

There were no leads offered at that time. They said, "We stand on our $300,000. Upset it at your peril."

Mr. Smith said, "Well, gentlemen, true, that is a story that has been told by the taxpayer but it is an uncorroborated story."

2234 The meeting ended and shortly thereafter, the case was referred to the Office of the Regional Counsel and, Assistant Regional Counsel Joseph B. King analyzed the case, sent a letter to the taxpayer and to his counsel of record, Eugene Bernstein, telling him that he had the matter for review; would they like a conference to present any matter of defense?

Eugene Berstein came in and presented a matter of defense. That was when Eugene Bernstein came in and said, "I have a schedule of funds available."

That was when he said for the first time, Paul DeLucia had money in the amount of $404,894, not identifying it as extortion money, but, for the first time, claiming that perhaps Paul could have gotten that money.

Mr. King said to Bernstein, "What about this $300,000 story? I am interested in hearing all the surrounding details. I am interested in obtaining any corroboration possible of the taxpayer's story about the cash on hand."

Mr. Bernstein was prepared to give him corroboration. He said, "I have a lawyer in town who was there and who counted the money."

2235 He didn't come out with the name of the lawyer at first.

But, later, in the conversation, he advised Mr. King

that it was Joseph Imburgio Bulger. He said, "There was a lawyer and one other person whose name I do not know who counted the money."

Mr. King said, "I would be very happy to hear what Mr. Bulger has to say about the $300,000. Produce him."

Mr. Bernstein said he would produce him and he would notify Mr. King of the time and date when he could produce him.

Subsequently, Mr. Bulger was produced by Mr. Bernstein, on November 19th, when he came into Mr. King's office and gave a reported statement.

You recall in the Grand Jury Mr. Bulger testified he went there at the specific request of Mr. DeLucia; that he went first to Mr. Bernsteiin and told Mr. Bernstein of that at the request of Mr. DeLucia. That when Mr. Bernstein said, "I think you ought to tell that to the Revenue Department," and he said he did not like to do that. He then received another call from Mr. De-
2236 Lucia; in response to that call, he went back to Mr. Bernstein; he made arrangements to go into the Revenue Service to repeat the story.

2237 So, then, on November 19, 1954, Mr. Bulger came in before King and told this incredible fantasy of counting $300,000.00 in the attic.

At that time and place, Mr. Bernstein informed Mr. King that he had been mistaken about other persons having knowledge of the $300,000.00; that there was no other person. This is Joseph Imburgio Bulger who is telling Mr. King about having counted that money. This is the same Mr. Joseph Imburgio Bulger who handled all the insurance on the River Forest home and the fire loss in May of 1943 on the Long Beach, Indiana, home.

I believe that all of the evidence in this case, and all of the other evidence that we have discussed shows conclusively that this $300,000.00 was a myth, was a myth,

that that meeting allegedly occurring on Christmas Day of 1943, if it took place at all, it was not for the purpose of counting out $300,000 in a tin box.

If you believe that Bulger and DeLucia discussed this matter in 1950 before he went before Kefauver, this is the date on which the conspiracy began as alleged in the indictment.

2238 In any event, this conspiracy had to begin before Mr. Bulger went in to see Joseph B. King. It had to begin before that date, November 19, 1954, and it continued down to and including the date of the indictment and Mr. Bulger was acting in furtherance of this conspiracy when he came in before the grand jury in February of 1957 and again told the big lie about that $300,000.00.

We have discussed at some length the inherent improbabilities of this $300,000.00 story. There is another little facet of that that is extremely interesting.

In the January—or, rather, in the February session of the grand jury, Mr. Bulger was presented with Paul DeLucia's 1943 income tax return. When he looked at the return, he said, "I prepared that return." There is no signature on that return of the preparer.

Then, apparently, he got the significance of what the preparation of that return might mean, and he said, "I don't think I prepared that return. I don't know whether I prepared that return. Maybe I prepared that re-
2239 turn. Probably I had something to do with it."

We know he had something to do with it because he wrote this letter to Mr. Thompson, the warden of the United States Federal House of Detention, New York City, on March 13, 1944:

"Dear Mr. Thompson:

"I have mailed, under separate cover, income tax schedule for Mr. DeLucia's signature, and would ap-

preciate it very much if you would see that he signs it properly and put it into the mail immediately.

"Thanking you for this courtesy, I am,

"Yours very truly,

"Joseph I. Bulger."

He sent that 1943 return to New York, to the House of Detention, for Paul DeLucia's signature.

Why was he concerned about the question of whether he prepared that return? I will tell you why. Do you recall the testimony of Revenue Agent Armstrong that he audited the 1942 and 1943 returns of Paul DeLucia;
2240 that he audited those returns from work papers that were provided to him by Eugene Bernstein; that those work papers showed that Mr. DeLucia had reported income in those years also on the expenditure basis; that those work papers showed that he had approximately $2,000.00, or a little more or less in the bank at the end of 1942 and again at the end of 1943? Those work papers also showed that he had personal cash, in addition to what was in the bank, of $200.00 at the end of 1942 and at the end of 1943.

If Paul DeLucia had $300,000.00 on hand at the end of 1943, on the basis of the way in which he filed and prepared his own returns, that meant that it had to have been taxable income to him during the calendar year 1943 because he started out the year with $200.00 and he would have wound up the year with $300,000.00 cash.

Joseph Imburgio Bulger knew that. He said to himself, "If I prepared this return, what about the $300,000.00?" And, it is obvious. If he prepared that return and if Paul DeLucia had $300,000.00 on hand at the end of 1943, that was a fraudulent return prepared by Bulger because the $300,000.00 would have to have been accounted for on that return as income in that year.

2241 On the other hand, if he prepared that return and the return was right, then he was telling a lie

about the $300,000.

That is why he was so concerned about who prepared that return. He didn't want to get near it with a ten foot pole.

There is another little bit of evidence that has some bearing upon this feature of the case: Do you remember the testimony of the former Revenue Agent Stonesifer? He had two meeting with Mr. Bulger while he was investigating the liability of DeLucia.

In the first of those meeting, he asked Bulger to tell him about all of the dealings, business dealings and otherwise, that he had had with Mr. DeLucia. Of course, he didn't tell him anything about the $300,000. But, aside from that, he denied having paid a fine on behalf of Mr. DeLucia of $10,000.

So, Stonesifer went away and he came back another day and he said, "Mr. Bulger, while I have been away, I have talked to someone named Corcillo and he tells me that you paid the $10,000 fine to him, and, I have read the testimony of Mr. DeLucia before the Kefauver
2242 Committee and there he said he gave the money to you, Mr. Bulger," and Bulger said, "If Paul says he gave it to me, I won't deny it."

If Paul says anything, he won't deny it. He would do anything for Paul. He is the front man for Paul. He is the bag man.

Ladies and gentlemen, the soul of the Biblical character Ananias resides within the carcasses of both of these defendants here on trial and the truth is a stranger. They tell any story that comes into their heads, that suits the convenience of the moment.

To quote Mr. DeLucia before the Kefauver Committee, he even gives any name that comes into his head. Ladies and gentlemen, I believe that the evidence in this case

proves beyond any peradventure of a doubt that Paul DeLucia willfully, deliberately and knowingly attempted to evade and defeat his Federal income taxes for the years 1948, 1949 and 1950.

I believe that it shows conclusively, beyond any reasonable doubt, that he and Joseph Imburgio Bulger conspired together to make false statements for the very purpose of helping to evade Paul DeLucia's Federal
2243 income taxes for those years.

I have finished with my summation of the evidence, ladies ad gentlemen. I ask you to keep an open mind until you have heard what the defense have to say to you, they being now privileged to address you next, and I will have an opportunity later of again addressing you in answer to what they say to you.

Thank you very much.

* * *

2244 * * * And Thereupon Mr. Stewart Addressed The Court And Jury On Behalf Of The Defendant De Lucia As Follows.

By Mr. Stewart: Gentlemen of the Government, gentlemen of the defense, ladies and gentlemen of the jury:

I have asked the Judge for permission to sit down because I don't think I could make it if I stood all through the time. You notice Mr. Barnett would stand as he produced his evidence and didn't think anything of it. There was a time when I rushed about, pounded the table, and did all the things young lawyers do, but the time is coming now where I have to pull up a little.

It probably won't be long before younger men like Mr. Barnett, Mr. Gorman and Mr. Green will be stepping
2245 in, and I will have to step out.

I want to first—of course, it is usual to bow a little bit. The Chinese have a proverb. They say "When you bow, bow low."

It is usual for lawyers to address a jury and first tell them how intelligent they are, and all that. I am not going to do that because I am going to say to you now to start with that actions should speak louder than words.

I think we have shown by our conduct and our actions that we have a great deal of confidence in your giving us a fair hearing. That doesn't mean that the case has to come out not guilty. It can come out guilty, but we like to hope that before it does, we have had the benefit of your consideration and intelligent consideration.

2246 Before I start talking about the case, I want to thank the Judge for his courtesy. It is a pleasure to work in this court room. You know, different Judges are different. Shakespeare said, "Comparisons are odious."

I don't want to reflect on other Judges, but, I have had experience in other court rooms. Judge Miner is always friendly and genial and he likes to see that you are comfortable and he has got that sort of personality which makes it comfortable for the lawyers, too, because it is entirely different here and the atmosphere is entirely different, if you are working with somebody who is different in that regard.

I want to give a word of thanks to Mr. Barnett, too, because I notice it when I have to try cases against lawyers who try to talk while I am talking and try to out-shout me and try to keep me from talking. If you are opposed to a lawyer such as that, you have to put up with him and do the best you can and sometimes you out-shout him or try to shame him into keeping quiet and giving you your turn.

2247 But, you will agree, we have endeavored to present this case, on both sides, that is, as orderly as it was possible.

And, I want to talk to you about the presentation, for

a moment, because you have a very important part in the matter. Mr. Barnett in his answer to the Judge's question one time estimated that this case would take about nine weeks to try. Well, we have tried it in two weeks.

You remember that in my opening statement I said, "One of our dangers is confusion," and I have tried all through the case to eliminate it and it hasn't been easy.

To start out with I offered the prosecution a stipulation. You know, that under the Constitution, any young law student or a young lawyer just getting his license can come into court and say, "You have to prove everything." The Constitution provides that the witnesses must come here and face us so that we can see them and examine them. We don't have to stipulate to things or agree to things.

But, I was anxious to do it because I was trying my best, sometime ago, looking forward to this day when we reached the argument,—I was trying to avoid
2248 what I was sure would happen if it took nine weeks trying this case: We would wind up with just about the defects we have in the case.

I think I can show you, if you haven't seen it already, that they have certain defects in their case that will never be overcome. If they spend nine weeks here putting in expenditures that we don't dispute, why, it is possible that some businessman might figure, "Well, they must have a case; there is so much of it; there must be a case there."

2249 I want to call your attention to another thing that happened here. Whether or not you appreciate it, depends on what your experience has been in court. There are all kinds of lawyers, of course, and some of you were on juries before. Maybe this happened before you, when you were on the other juries—here is what happens:

The lawyer for the plaintiff puts on a witness and after he gives his name and address and he is asked some questions, why, the defense will object and say, "What is the purpose of this?" And, the Judge might ask of the plaintiff, "What is the purpose?" So that the plaintiff is required to state his object right then and there, what the object of this proof is, and then, the defendant objects on the ground that that isn't good enough proof, and it has this defect in there and that defect in it.

Well, of course, if yo have served on juries on other occasions, you know that the judges are on to that; they know what the lawyer is doing. He is indirectly arguing to the jury—he can't wait until his case is over; he is afraid that the jury might get some impression that
2250 is against him and he has to tell what he thinks, as the evidence goes in.

It is hard for the judge to control that sort of tactic because the judge is required to listen and see if there is a ground for legal objection.

But, as soon as the judge sees what the lawyer has objected to is merely for the purpose of wanting to make an argument in front of the jury, why, the judge winds up saying, "It is a question for the jury. Overruled, and go ahead."

Of course, the judge is always in this position: When the lawyer objects, probably to the first or second or third witness, the judge has patience, so, he figures, "Well, that isn't the entire case of the plaintiff" or "the Government." That they have other witnesses and "what is the use of starting to object now about whether that proves something or not?"

Now, we adopted a different tactic and I am going to take a piece of evidence and show you how we did it.

You have noticed some of these things and how it might have been done. Then, I am going to point

2251 out what our argument really is and you will hear it for the first time.

Some of these things may have occurred to you as you went along, but I just want to point out the difference and I want to point out that I appreciate it that Judge Miner, each time you had a recess or went home, he would ask you, as a fair-minded man would—he would say, "Keep your minds open." With that in mind, why, we relied on him. It isn't easy, sometimes. You form impressions, but you are going to make an effort.

Now, let me give you an example of what I mean by the manner in which this case was tried.

As you look at this evidence,—you see I am not going to go over the whole evidence with you, every bit—but, I am going to pick out a few spots and give you the way that I look at it and then, if I look at it reasonably, in your opinion, why, you will agree with me; if you reject my reasons, you won't.

2252 You will get some idea probably from me as to how you should take up each piece of evidence. I would say that the logical way to do is to say, well, what did Mr. Barnett put this man on for? What part of his case was he trying to prove?

And then, what has he proved?

Now, also Mr. Barnett and his witnesses, the agents, had to draw certain conclusions, and the question is whether those are reasonable conclusions or unreasonable ones.

There is nobody in the world that has the power to tell you which way to vote or which way to regard these things. You are the most powerful body in the world. Nobody can review what you say about the facts. If Judge Miner, in his good nature, would offer you a chance to come down here again and spend another two weeks on the bench and take his part, you would find out

that the Judge's power is limited and the jury has certain powers that the Judge doesn't have.

All the Judge can do in his function is to say, "Well, it is a question for the jury."

So, these conclusions that have been offered you here—we didn't interrupt. We didn't argue as we went along. But we don't agree with some of the conclusions.

2253

I will take one, as an example. You remember Mr. Mahon. He was the agent. He came from New York here, very active in helping Mr. Barnett, and he went on, in order to supply certain things that the Government needs.

You see, the law requires these things to be proven, and don't forget the burden never shifts to the defendant. The defendant has no burden. These requirements of the case are laid down by the law, including the Supreme Court of the United States, the trial Judges, and the intermediate courts, and they are bound up in volumes and lawyers study them. But some of them are so fundamental that there is no dispute about them.

Anybody that knows the first thing about the case they are trying knows certain things must be proven.

Now, if a man is shown to have spent money during a period of time—the indictment years, as you know now, having heard it over and over again, are 1948, 1949 and 1950. If it is shown that a man spent money which is beyond and above the amount that he has reported to the Government and paid taxes on, then they claim that he spent it out of income. But they have to prove it.

2254

So the burden not being on the defendant, and you know now that there are certain things that have to be walled off or shut off, to use Mr. Barnett's phrase. That

is, the Government must prove that the man who has overspent himself hasn't been spending out of an inheritance, for instance.

So what do we have? I am making a little point of this and giving you the details because I think it is rather characteristic of what you have been given as we sat here.

Mr. Mahon, you will remember when I remind you—it may have seemed insignificant to you at the time but Mr. Barnett was asking the questions, leading right to this point, because Mr. Barnett realized that it was one of those bases he had to cover.

2255 He asked if he had gone over to the Probate Court of Cook County. Do you remember that? Mr. Mahon said he had. And what had he done? Had he searched the records over there to determine whether or not there were any inheritances? "Where did you look, Mr. Mahon?"

Mr. Mahon looked under the name DeLucia to see if there was any estate, probably, of the DeLucia family. He went further, and he knew the maiden name of Nancy DeLucia, which is Giganti. He knew the first name of the father and the first name of the mother. He looked under those names.

Then he comes in here and he says, well, now I am satisfied myself and I am going to tell Judge Miner and the jury that there are no inheritances.

We didn't say a word. I wonder if you knew as you heard that, that that evidence wasn't worth a nickel? I wonder about whether or not that is an insult to your intelligence.

If somebody left Paul DeLucia a million dollars and he happened to live in Cook County and he died, his estate would be under the names of Jones or whatever the name of the person is. It wouldn't be under the name

2256 of DeLucia. It wouldn't be under the name of Giganti. These people came from Italy. The forefathers of these people, you know, are over in Italy. If they died and left any money, the money would be left over in Italy.

Paul DeLucia lived over in Long Beach, Indiana. I believe the name of the county is Porter, the county seat there. There are three thousand county seats in this country. If somebody by the name of Schultz died and left some money, the name would be under Schultz over there.

Now, we don't need a gift or inheritance out of which to spend the money. It is just one of those things they had to prove, and that is what they handed you and said here is our proof. Now their proof wouldn't stand up under just a little analysis.

The same way, they took the trouble to bring a man that is in business building furnaces and servicing them from out in the country, near the country home at Long Beach. Lo and behold, Paul DeLucia bought a furnace that cost him about $1200.00 and it was bought on installments, mind you.

2257 Then you ask yourself what is Mr. Barnett doing? What is he bringing that in for? You heard him argue the case. He wants to argue from that that Paul was broke about then, and he had to buy something by installments. But you know from other evidence that there was plenty of money, and you also know from your experience that sometimes people buy in installments because they think probably the dealer will be a little more interested if he gets a call to come over and give some service to the furnace.

I mean if there are other explanations, you should take those explanations. Don't just take the one that they try to hand you here, and that is just one little instance.

I hope you have had some experience in your civil jury service where you had to do with experts in testimony because it is an exception to the general rule.

Mr. Mahon and his partner, the last witness who went on the stand for the Government, they are what are called "experts," and they are allowed to go on because it saves you the trouble, and me, the judge, and everybody, of adding up this figure and telling what that tax was and what the various taxes were. But when they come to telling you what to do or what the evidence shows, they have no right to draw their conclusions and leave out some things and put in other things and draw conclusions that are not warranted by the evidence.

The reason I said I hoped that you had some experience where, for instance, a medical expert took the stand before you. In an injury case a doctor goes on the stand and the plaintiff naturally would like to show that the injuries are severe, and it takes medical testimony to show it. The doctor tells first what the symptoms are, or he might go on not having seen the patient at all, and the symptoms may have been recited in evidence, and then he bases his opinion on what is heard in evidence.

If you find that the symptoms are not the way that that doctor says they are or the doctor is drawing conclusions that you know he is trying to say two and two is five, or something, you don't have to take the opinion.

Now, let's analyze Mr. Mahon's opinion a little bit. We don't need to bother with whether Mr. Mahon believes these things or not because that gets into another field that we don't need to bother about here. I don't know, I will give him the presumption of innocence, and say he has been a Revenue agent so long, he believes guilt where there is none shown.

He says that from 1920 to 1935, there was only $30,000 of income shown. That is about $2,000 a year. In 1934 there was $8,000 which was taxable.

Mr. Barnett just told you in the argument that I didn't cross examine very long. Well, I didn't need to. The moment he told me what I wanted, and I knew he
2260 had to tell me, why, then that is the end of it.

He said that he assumed, he had to, he said, assumed that Paul DeLucia paid all the tax the Government had coming to it as an honest man all those years.

Well, how does he have to assume that? Of course, if he doesn't assume that his case is out the window because in 1948, 1949, and 1950, if any of that money was obtained by Paul DeLucia in the previous years, whether he stole it or got it through prohibition or any way in the world he got it, so long as he had it, it wasn't income during the years he is indicted for.

2261 Now there is something you will never get over in this case. They want you to get at those conclusions by presumptions and drawing conclusions, and they want to start a fellow back with nothing, and then what do they do? They destroy their very case right in front of your very eyes.

They didn't need to bring Mr. Garden in here, unless of course they had some purpose of bringing things in, and then just trying to muddy up the waters. Talk about bankruptcies and talk about how much Joe Bulger paid in taxes, and things like that. Joe is not on trial for that.

But here is what they did, and it was deliberate because sometimes the witness goes on, every lawyer has that experience, when he gets some unexpected answer and you didn't think he was going to tell you that. But this was a line of questioning. How big? Were they big bills or small bills?

By Mr. Garden, Mr. Barnett showed that Paul DeLucia

was handling thousands and thousands of dollars. Then Mr. Mahon goes on there, and he calculates for you that this man Paul DeLucia must be guilty.

2262 I say to him on cross examination I don't see where you have taken into consideration this $180,000.00 that—you remember I used the term Irish Village. I made a slip. But it was the Italian Village, and Mr. Mahon says, no, I didn't take that into consideration at all because I found no proof in the evidence that that was Paul DeLucia's money.

You see by that, Mr. Mahon is applying his standards and the standards of revenue people. If you know anything about revenue people, they say you are wrong, and you have to prove that you are right. If you go over and buy a lunch for a customer you have to get a receipt. If you don't get a receipt and show it to them, they say you can't have that. That is all right when they are in their office, but when they are in court here, they have to have proof.

Mr. Mahon says that I know Paul DeLucia handled money, but I don't find any proof in the record. What kind of proof do you want? He had it. When they get into the indictment years having it is enough. He spent the money, so they say not only was it his money,

2263 but it was money that came out of income because if it didn't come out of income, they have no case.

So when I asked him about the $180,000.00, he says he isn't going to regard that at all. And what do I care? And what do you care? Mr. Barnett comes ahead and proves the bankruptcy. For what purpose? He wants to show that, well, you might think that some of that $180,000.00 belonged to Paul and he lost it because the place didn't make money.

Well, doesn't it put you on your guard? Did they show by Mr. Garden in any way that the money Paul put

up was all Paul had? If he had $180,000.00, why couldn't he have had twice that much? If he had that kind of money back in those days, he had enough to spend on this farm.

Mr. Barnett said he was spending it on his farm, and this unreasonable, I suppose, so therefore it must be out of income. It isn't capital. He wouldn't spend his capital.

You are not spending capital when you are putting it in on a farm and hope to get something back and make your capital work for you. You must remember Paul was on parole at that time and under the surveil-
2264 lance of the officials and he was spending the money and he knew he was in the clear. He knew he had settled his trouble, or thought he had, with the Government.

Then we go ahead and I said, Mr. Mahon, well, how about this $1,800,000.00?

You were here and you hear Mr. Ruggaber testify. Mr. Mahon said there was no such testimony. Well, what are you going to do with anybody like that?

2265 I mean, there is something wrong with his memory, or his morals. Maybe he thinks there is something wrong with your intelligence.

But, you heard Mr. Ruggaber in answer to my questions—you see, they took an arbitrary attitude, which, of course, they do.

Now, I don't know a whole lot about this tax business, but, I have learned enough to know something about this case. By the way, the bookkeeping part of it just kept getting into the background further and further.

As I see it, it is no more a bookkeeping case at all because, if they don't establish certain things, they have no case and it is no use. When we started, I had the assistance of Mr. Bernstein and Mr. Joseph Burns and their expert accountants. I can add you up figures three times

and get you three different answers. I thought maybe I would need help from them, because if you get a loss from a fire or a loan, I don't know whether that is something you have to pay tax on or not, but these gentlemen do.

As we went along, we found that we didn't need them.

We did not need to question their figures. If Paul
2266 has the money that you know he had, from the evidence, or you feel pretty sure he had, this arithmetic job they are trying to do just doesn't fit this kind of a case.

Now, let us take a look at it while I am talking to you about how they arbitrarily do things. You see, if you are in trouble with them about taxes, here is the situation: They come around to your place of business and they want to see your books. They spend maybe days there and go over your books and they say, "We won't allow you this," and "We won't allow you that," and they argue about that.

If your wife is on the payroll, they will say, "How much work does your wife do around here?" And, they go around to see her at home and they go around to visit the people she plays bridge with and they say, "With all this bridge playing, she can't earn this $5,000 a year you are giving her."

They say, "You are trying to keep your expenses up and your income down." They say they won't allow it.

They won't allow this and they won't allow that.

2267 From my standpoint, all they have to do is write you what they call a "90-day letter," and you get the letter and they say they want $3,000 more for a certain year. And, if you go to see a tax lawyer, he will tell you, "Well, can you prove that you don't owe that, because the burden is on you in the Tax Court, and they start out with a presumption."

They just introduce their letter and they can quit. That's all there is to it.

These reports, these are presumptively correct, no matter how they arrived at it; you can't question that. You must bring in your evidence and show them. If you don't show them--a lot of times a fellow goes down to see a tax lawyer. He find out that it is cheaper to pay, or he sends a lawyer, like Mr. Bernstein was sent down, to see if they can't settle it for $1500.

That is different than coming into the criminal court.

When they come in here, they can't arbitrarily make decisions and say they will reject this and they will accept that.

2268 As we went along in the case, I relied on you so much that I did not think I needed to cross examine the second expert. I had already shown you the pitch.

Remember the second expert, what he did? Now, if you went home and told this to your children and recited the thing, they would have trouble believing you; that a grown man with experience in the revenue business would get on the stand and give you some figures, and they don't come out so much different anyhow. I mean, it isn't so much tax due the way they figured out—and then say Mr. Barnett figured I was going to cross examine him. He thought, "I better bring it out first so it won't look so bad."

We hadn't heard anything about the Bennett loan yet. Mr. Barnett asked him, "By the way, was the Bennett loan in there?" That is $80,000.00. That is a considerable amount of money.

You know enough now, after you heard these arguments and things, that that $80,000.00 is not income. If you borrow it, you can spend it and it is none of the

2269 revenue people's business.

But, this expert, he just takes it out. Now, what

does he take it out of? You remember it was the last objection I made. The Judge ruled with me and correctly so, because that expert had no business telling you how to believe and what not to believe.

And, what did the witness Dick, you know, the banker from Bloomington—what did Mr. Dick tell you? He said that they were trying to buy, they were negotiating to buy the farm, and that is a big farm, 110 acres, $500,000.00. And the man who was buying was interested and he wanted to buy it but he didn't want the mortgage on it. Well, Paul went down and saw the insurance company and the insurance company wouldn't let him buy it off unless he paid a penalty. Well, he must have been a pretty good risk. They didn't want the money. They preferred the investment. Paul didn't want to pay the penalty. He asked the purchaser if the purchaser wouldn't buy the farm and leave the mortgage on there.

And then, you know a lot of times a prosecutor, 2270 whether he intends it or not, it is just his nature or the way cases are tried—they use the word, they "discover" a second mortgage. Well, it was recorded. You don't discover things that are recorded when you are dealing with a bank and experts in real estate. They know a second mortgage was recorded on that property right in the very beginning, but, Mr. Dick said he went out there to see if the property could be cleared off because his buyer wanted to buy it and that is years ago, and you know it from the record, you already have it in the record Mr. Bernstein already told those revenue people Paul talks brokenly and it is a little hard to understand him. Paul said to Mr. Dick, "Well, you won't have any trouble with that. I don't owe it anyhow."

You are supposed to take the evidence so that you can have the innocent view. Paul might have said that, but, the time was different.

The loan was made. What did they bring Butler in for if they don't think the loan was made? He handled the check. It was of record. The gall of this second expert, to go on the stand and say, "I have thrown that out."

2271 He not only threw out the forty thousand on the farm, he threw out the other forty thousand dollars on the residence.

Mr. Dick said nothing about that. It just shows you how they operate.

2272 Let me tell you about a rule of law that there won't be any dispute about. You see, these rules of law are supposed to be based on the experience of mankind. Sometimes the law is smarter than we are, individually, because sometimes we don't see the reason for a law, but, it has been tried out, it has been found to be wise and it is used.

Now, one substantial rule that Judge Miner would enforce if he were requested, is that the party who has the burden, be he the plaintiff in a civil case or the Government in a criminal case, must produce the best evidence.

That is reasonable, isn't it?

Now, if they want to dispute that Bennett loan, who would know the most about that? It would be Mr. Bennett, woludn't it, and the records of the bank. You can't make a phony mortgage with the Oak Park Bank when your property is in trust. I mean, that is ridiculous, just to show you the extent to which they go in trying to make something look bad when they should know different.

They brought a big, green volume of the Kefauver Committee and Mr. Bennett was called four times

2273 in there. You know, he was taken up hill and down dale.

When you come to this best evidence rule, for instance, supposing over in your civil court they have a street car accident and the street car company doesn't put the

motorman on and he was right up there and had the accident and saw it? Well, they have to put him on and if they don't put him on the lawyers are smart and if the man is dead, they come in and prove by some witnesses that he is dead, just to show that they couldn't produce him, because they know if they don't produce him, the Judge has a right to instruct the jury and the jury has a right to believe the presumption is if you haven't brought in the fellow that knows about it he wouldn't have backed up your theory.

That is commonsense, isn't it?

If they would have brought Mr. Bennett here, the chances are he wouldn't have backed them up. It just shows you how they suited themselves.

2274 Armstrong, remember him, the agent? He went over and saw Mr. Eben. Mr. Eben got $15,000.00 as a fee. "Who paid you, Mr. Eben?"

"Well, the people were there, but I don't remember which one gave it to me."

"Who did you represent?"

"I represented all of the defendants. There were six."

Well, you divide it by six, maybe, but, anyhow, Mr. Armstrong checked further and saw the court record said Mr. Eben only represented two, so, therefore, Mr. Armstrong cut it in half, said, $10,500.00 was paid by Paul, without any evidence, without the slightest evidence.

Then he goes over and see Mr. Bernstein and says:

"I saw Mr. Eben. Mr. Eben says he got $15,000.00 and I am going to charge half of it to Paul."

Mr. Bernstein said, "Paul didn't pay any of that. The syndicate paid."

Well, that is something else's case. All the evidence

2275 Mr. Armstrong has—somebody else paid it. Then he puts in his report "Paul paid it." If you ran against it in a civil case, that would be presumptively true; you would have to prove you did not have the transaction.

Then they try to wiggle around and say, "Oh, well, I wasn't making these adjustments for the purpose of getting the additional tax." He was just doing that to offset a fire loss.

Well, that isn't true because he told you that he started this adjustment and, by the way, Mr. Barnett refers to these things as "routine" examination and that is all. You know they weren't routine.

They were keeping at them and keeping at them all the time, year after year, investigating them.

And then, they would like to have you think that Mr. Armstrong just put all those different figures in there to kind of meet the fire loss. He started doing that before he knew about the fire loss.

Then, when I asked him about the fire loss, you remember he admitted to me if the money came from an insurance company to pay a fire loss, it wasn't in-
2276 come.

He went and he checked and he made sure that that was paid. He saw some photostatic copies of checks. But, yes, he dismissed the whole thing and he wouldn't allow it—he recommended that no allowance be made for that because Paul had made a mistake when he put it down in his income, and, he had gotten it from the insurance company.

Now, it is just little things, but these little things show you what we are up against. He wouldn't allow the property tax. You know anybody can deduct taxes that he pays on his home, but he wouldn't allow the home tax. Nancy paid that, he said, and the property was in the name of the wife, so, he wouldn't allow Paul the tax.

Do you think that is a fair trial? It isn't. It is arbitrary treatment. And, that is the way it goes all the way through.

2277 Now, we are charged here with making false statements and this hasn't been talked about yet.

You know, the trouble with the Judge's instructions—I mean, it is no fault of the Judge, because he has to go to the legal books and it will be more or less legal language and it will be at the end of the argument and nobody is in a position to tell you how to apply those instructions, so, with your permission and your attention, I will talk to you a little bit about how to apply some of them, because they are fundamental principles, and, this business of circumstantial evidence, the Judge will tell you a rule, but it will be in legal language; it will be that the circumstances themselves must be proved clearly.

And then, there should be enough of them to lead you to the conclusion that they want you to go to, or the guilt, and to no other. If there is some other way you can look at those same circumstances and find us not guilty, well, you are supposed to take our side of that.

That is only in fairness.

2278 Oh, years ago I was in a case and a prosecutor—I will tell you a little story because it illustrates what I have in my mind. It is a little easier than talking about dry legal rules.

This prosecutor knew he had a circumstantial evidence case and he knew that juries sometimes have a little skepticism. You know, jurors know things before they become jurors.

So, he was arguing like Mr. Barnett did here, in the opening before I had a chance to argue, and he was standing up for circumstantial evidence and it is true that the circumstances can be so strong that they are really satisfied, and, so, he used an illustration and he said,

"Do you remember reading Robinson Crusoe? Remember that story when you were a child and went to school? He thought he was alone on an island and

he got up one morning and walked along the shore and there was a fresh human footprint in the sand and he knew from that that there was a man on the island and that is the story."

2279 And this prosecutor was using that as an illustration to show that Robinson Crusoe knew that there was a man on the island just as certainly as if he had seen him.

When it came my turn, I said, "Supposing it had been a woman?" It is one and the same footprint.

It was another conclusion that probably this prosecutor didn't think about. We are entitled to think about these different conclusions.

If we had Mr. Mahon and Mr. Barnett indulging in this fairy story, he could have asked him about the footprint on the sand and he would have told you not only that it was a man, he would say, "He had blue eyes and was going home to his hut to eat beans for dinner."

And, I would take him on my cross examination and could have asked him, "How do you know he had blue eyes just from seeing the footprints?" And he would have said that he had to assume that. And, "How do you know he had beans for dinner?"

"Well, he had some beans, so he had them to eat and so he must have eaten them."

2280 Now, you think that is ridiculous that I am saying that about Mr. Mahon. Well, he did the very same thing right in front of your eyes.

I said, "I see on your photograph near the upper right-hand corner you have $11,000.00 and you know at that time Paul was in the penitentiary, don't you and you have that as an expenditure."

He said, "Well, I know he had enough money to buy those cars and they were bought for his family, so he must have bought them."

That is the reason why they think it is all right.

If he is up in his office trying to sand bag you out of your money and show you where you owe money, it is all right, but where you are trying to send somebody to the penitentiary, it won't do.

Let us see about this business of the false statements. You know, I hope you look back on your experience here and, looking back on it, you can figure there is a place where you have been entertained. Of course, you have a serious job to perform, but maybe you might learn one or two things. There are some common acceptances
2281 of strong knowledge. You are all presumed to know the law, but there are some misconceptions that are common and that one misconception is that any lie that is told, any lie that is told under oath, is a perjury, but, that isn't true.

If you know the first thing about law, perjury is only committed when a lie is told wilfully on a material matter within the jurisdiction of the person who is asking the question.

And, the law is rather jealous of procedure. Now, these laws, as I said before, are based on experience and they require that if the Government wants to charge someone with perjury, they have to prove the falsity by two witnesses, or, one witness and circumstances. One witness against another is not enough because you have that every day.

The law is such they don't want to threaten everybody who testifies that he might be charged with perjury if he happens to differ from another witness.

2282 Let me give you an example of what is material and what is immaterial because you will find that word in the Judge's instructions and he can't stop to explain it the way I am trying to explain it to you.

Supposing you are asked to sign a bond for a thousand dollars for someone, in Probate Court, or anywhere. It is an official document and whoever is in charge, the Clerk or somebody, he requires you to be sworn. He has to fill out blanks. You put in what you own.

Supposing you say you are worth $100,000. You just want to put on a good front. You are signing a $1000 bond. It turns out you are only worth $5,000. That isn't perjury. The bond is only $1,000. If you are worth $2,000, that is enough. Nobody has been injured and it is not perjury.

So, the statute that they have here about making a false statement, that is prepared by Congress and I suppose the Congressmen figured that the Government needs a little more protection because you know these contractors who work for the Government and they are supposed to file certain vouchers and things, and
2283 of course, the businessman has to protect himself without any laws, but Congress passes a law that if you make some false voucher or make some false statement to some Bureau of the Government within its jurisdiction, you can be guilty of a penitentiary offense.

But, the false statement must be material. And, this indictment says the falsity was material.

If you wrote the Revenue people a letter and sent them an affidavit and told them it was raining last Sunday and you knew the sun was shining, it can't be perjury. It is false, but it didn't do them any damage and it didn't do them any harm and it wasn't within their jurisdiction.

Now, I am leading up to a great defect in their case and if I can have you go along and if you agree with me, I could probably just let it go with this and nothing else.

I said I was grateful to Mr. Barnett and I was, because if people will combine, even friendly enemies, and make working conditions somewhere near comfortable, why, I

appreciate it and I appreciate the attitude of the Judge.

I appreciate your attention.

2284 But, Mr. Barnett did something in this case right before your eyes and he is perfectly right, in a way. When you just apply the law strictly—I will tell you what he did.

You remember, we put on a little kind of a like a little play here and we took parts. That was where Paul DeLucia, Mr. Bernstein and I went up to see the Revenue people on September 1, 1954. And there was a printed transcript and we each had a copy. You remember that, and it said who was present.

The boss of those present was Tom Smith. He was the group chief.

Mr. Stonesifer was present, and Mr. Scholz. Those people were there for the Revenue Department. I was there, Mr. Bernstein was there, Paul DeLucia was there.

And, you will remember, and maybe the Judge will let you have the transcript out in your jury room and if he does, why, you can read it over again if it slipped your mind, but, you remember when I remind you that Mr. Smith said, "Well, we have nothing to do. We are not a fact-finding body and we don't have anything to do with whether there is to be a prosecution or not. We
2285 must just pass along—when we gather up this thing, we pass it along."

Now, this statute that I was telling you about, about being a penitentiary offense to tell the Bureau or somebody connected with the Bureau a falsehood, that has to be construed with some reason and commonsense and it has been held that it doesn't apply to the FBI.

You know, if somebody comes around from the FBI and shows you his credentials, you can lie to him all you want. You don't have to talk to them. If you lie to them, that is just too bad. He is only investigating and he can find out from somebody else.

They might bluff you a little and say they would charge you with lying, but they can't sustain it.

2286 So if you assume—I don't know, just for the purpose of argument, some of you might think Bulger told something that wasn't true when he said that he counted $300,000. But Mr. Barnett put Smith on the stand and had Smith testify to a conversation with Paul DeLucia down in Florida, and it only concerned Paul's statement that Paul had kicked in $25,000 into a defense fund for the New York trial. That is all Mr. Smith testified to.

Well, I like to avoid these wrangles about the admissibility of evidence. I think you will agree, and if you see other cases you are bound to agree, that I did pretty well avoiding them. I just rely on your intelligence. You will get the case later.

But here is what happened. I didn't want to get into a controversy before the jury on a cross examination where I would be blocked with objections. I knew Mr. Smith would only testify to the Florida conversation, if Mr. Barnett would object. I wanted to ask Mr. Smith about that September 1st time when we were all up to his office.

I wanted to ask him what his report was and
2287 what we said there, whether he believed us or didn't believe us. Mr. Bulger came in. I wanted to know whether they were deceived or not.

When I told the Judge that I would like to ask those questions, Mr. Barnett objected. He was perfectly right from a strict legal point that I had no right to cross examine about something that he hadn't asked about.

But I have a right to call your attention to the fact that he hasn't proved—he has even tried to avoid it—he hasn't proven that they were fooled by Bulger's statement, true or false.

If my slant—I took this slant three or four years ago when I went up there and told them, I said, "You fellows, we have cooperated with you long enough and my information is you get your orders from Washington anyhow, and the Attorney General has prejudged our case and he is out to prosecute us. What is the use of talking to you? You are not free to give us any benefit, and all you want to do is make a case and start with us.

"If you want Paul DeLucia to sit down here and help you build a case, we are not going to do it. If you
2288 have a case, go ahead and prove it."

Well, that was a challenge, wasn't it?

Now if a matter is a matter of fact, if they had already determined that in Washington or here that they were going to prosecute, and they were just sending for us to try to put us on the hook, why, nobody has been deceived. They were going to do it anyhow. So there is nothing to that whole business.

How about the statute of limitations? You know, you can't keep up things forever. In order to try to get around the statute of limitations, they say that the conspiracy started back in 1950 and it continued right along.

2289 Then Mr. Barnett—you know, he is a good lawyer in this type of work. He specializes in it. So he says that one of the overt acts in that case was that Bulger went before the grand jury and told them the same lie.

Well, Bulger wasn't there to try to deceive the grand jury. He was there because he was sent for by them. I might add to that they were trying to put that rope around his neck and pull it tight.

It is ridiculous to say that that is a continuing part of a conspiracy to defeat taxes when the indictment says that the falsity was to the Revenue Service. They extended over to the grand jury, which is not the Revenue Service.

But the importance of that is that that is within the statute of limitations, where if you go back there to those years back there, the statute has run. They should quit. They should have quit a long time ago.

What do you think about the morals of the thing with reference to settling? And what is the difference whether Paul got that money out of the New York case or
2290 not? I mean, as far as this case is concerned.

What we had a right to do was to kind of meet them in the way they were trying to do it. They had destroyed their case already with the way they put it in.

But you remember Mr. Ruggaber. You see, I know something about that New York case because the evidence shows here that I was called in to take it up on the appeal.

When I said would you mind looking at the record when you go downstairs, Mr. Barnett said that would be a record like that, and he indicated with his arm. It would be. They took these men a thousand miles from home and tried them in New York.

We have no right to retry that, but we have got enough in here now for me to talk about it because Mr. Barnett put in that, you know, thick volume of the Congressional hearing by that long faced Congressman who was in here, Hoffman, you know? He looked like he was sore at the world.

You could tell from the way Mr. Barnett asked me if it would be all right to put the brown volume in,
2291 I had already brought it here myself on some preliminary motions, I would have stipulated and agreed to put it in because it is part of the history of the case. There is as much in there for us as there is for the Government because it shows persecution.

If this Congressman was anywhere near on the square, if he had any decency about him, when Mr. Barnett asked

him would he come to Chicago—he comes from Michigan. He is a Republican.

Mr. Hoffman should have said what do you want me for? Then Mr. Barnett would say I want to prove by you that Paul, at your hearing, said he didn't get that movie money.

Hoffman could have said, well, you have got that in the record. Won't the lawyer admit it is in the record? You don't need me for that. What is further, I didn't believe him. You look at my report, and I was trying to get some kind of pressure on him to make him reimburse those movie magnates for $1,800,000.00, and I was trying to get him sent back to the penitentiary because of the granting of the parole.

2292 That is what they were trying to do. They attacked everybody connected with the parole, and they wound up with nothing. But they caused a lot of embarrassment. They brought these tax people before them, and those people hid behind something. They said we won't tell you anything because we have a regulation and we have a letter from our boss, and we don't have to answer questions. Mr. Ruggaber was called there, and he took that position.

So they brought that Hoffman Committee meeting here and they brought the Kefauver here. You must remember that Paul DeLucia was on parole when these various Congressional committees were holding their hearings.

I was his lawyer, and what would you advise him if you were his lawyer? If he went on the Congressional meeting stand and said I take the Fifth Amendment, the parole people would have said you are not cooperating with authorities; you are not acting as a citizen should on the outside, so come back and go inside. That would have been a violation of parole. So he had to answer questions.

2293 Now, I suppose I could stir up some controversy among you by telling you that I think a great deal about our form of government. The foundation is right. The trouble we get into is due to abuses.

We have got three branches of the Government, and they are supposed to stay away from each other's functions. That is, you have the legislative, which makes the laws. You have the executive department, which includes the tax people and the police and the marshals and the FBI and the President and everybody in the executive end. They enforce the laws. Then you have the judiciary represented by Judge Miner here. They listen and decide.

Those three branches are supposed to be kept separate. By due process of law, a person is supposed to have certain things given to him, a charge, a chance to meet the charge before a jury.

These Congressmen run these hearings, and they act as judge, jury, executioner, and everything. There are no rules of evidence. There is nothing. They go after
2294 somebody, and it is an abuse of their power because they are only supposed to hold hearings to see who wants this law or who wants that law. They are not supposed to pry into whether or not a parole was rightfully issued.

But it was a political year. The Republicans were in charge of Congress and the Democrats were in power in the executive department, and they were trying to trace some sort of corruption all the way, right up into the White House. They got a lot of headlines in the paper. Maybe it helped them to win the election, I don't know.

What I am leading up to is that Mr. Barnett read from what they call the traverse. I drew that because I had to take out a writ of habeas corpus. These Congressmen brought such pressure on the Parole Board—first the Parole Board people came in and defended them-

selves, testified at length that there was nothing wrong about the parole; the men were eligible, had served the time they were supposed to serve, were fit subjects for parole; were keeping that parole, were on parole,
2295 and there was no reason in the world we know of that we could take them back for a violation.
2296 The Congressman kept at them and at them, and got some of them fired. Finally they issued a warrant without evidence. The traverse he read from, if he had read the rest of it, would tell you what I am telling you now: That they did it arbitrarily and without any evidence, and then the Judge would sustain it.

Just think of the conduct of the Government all the way through this case. I don't mean Mr. Barnett. He had to take just what he had. As I read over that September 1st meeting before Tom Smith and those people —by the way, you remember as I read that, I said, "What are you going to do about the $300,000?"

They said they hadn't made up their minds about that because there was no corroboration. You don't need corroboration in court, but of course, they can make their own rules when they try to figure out whether you owe money or not.

So you can remember the date. Paul DeLucia and his friends were in the penitentiary when this negotiation was carried on with the Government. The Govern-
2297 ment in the movie trial took the testimony of some accomplice witnesses and they just took that all as being true, and that the money was paid into a group of certain people, and Paul's share was two-ninths.

The fact that Paul denies that he got it, that is neither here nor there. We are not trying that. All we have here is his oath that he didn't get it, so you make up your mind either way. It doesn't matter.

All we are concerned with is that they arbitrarily—

they had no evidence about how that money, the $1,800,000 reached a group of defendants. Mr. Ruggaber was honest enough to tell me when he was on the stand—they regard it as a slip.

Remember? I said, "Well, as far as you know, Paul could have gotten a hundred per cent of that money, $1,800,000."

He said, "Yes," which is true.

He didn't know because he had no way of tracing through this record where the money went, after it went into the hand of certain messengers that were supposed to take it over to the defendants.

Then as to how it was divided, Bioff and Brown
2298 could testify to what the deal was. They were to take something out of it, and then it was turned over through a messenger to the defendants, and they were to divide it up.

Then they wanted to bring Mr. Ruggaber back the next day and tell you what he meant to say, or something like that, and the Judge wouldn't let them. The significant thing is that Mr. Mahon tells us that there is no such testimony.

But what do you think about the conduct of the Government? They have no business going back to 1934 in this case anyhow. They settled, didn't they?

Supposing you had a dispute with somebody and you settled it.

Paul DeLucia wanted to get his parole and he wanted it bad enough, maybe, to pay something he didn't owe, as far as we know. But it was coercion. It was blackmail. He was in the penitentiary and you know he wasn't getting any parole while he still owed Uncle Sam money.

Then they go along, and they get $190,000. They wouldn't settle for just a judgment. Mr. Marsh was on the stand. An ordinary taxpayer goes in and admits

it, and a judgment is entered against him, and they collect it.

Mr. Marsh said, "No, it has to be cash on the barrelhead for both of them, or I won't take any of it."

So Mr. Bernstein paid it. Then what happened? People get out on parole. Then the Government comes along and says, "Now, you won't tell us who contributed that money, so we are going to regard it as a gift. We can't find the person who gave the gift, so we are going to make you pay the tax."

So they did. It they want money, they can always get it. In the case we are trying they don't want money. They never sent us the ninety-day letter. For some reason or other, they want this man in the penitentiary, and they want it whether they have got a case or not.

As I told you, I can't go over every little piece of evidence and tell you how I think you ought to look at this and look at that, but as I listened to Mr. Barrett when he was making his argument, I couldn't resist thinking myself he has been around those revenue agents so long that he does the same thing; he jumps to conclusions without taking everything into consideration.

The little girl that couldn't speak up very well there, you know, Joe Bulger's secretary—all she said was that she came back from New York, she was helping her boss there, and she came back Christmas Eve. She didn't say anything about when Joe came back. Not a word. The trial was over December 22nd.

As far as we know, of course, Paul came back and said he wanted to see Joe. Then Mr. Barnett makes the argument here—now just use this as a kind of test. It will show you that Mr. Barnett has been contaminated too by this business of jumping at conclusions.

He says this is unreasonable. Paul told the Kefauver

Committee that he had money, part of it was in a vault and part of it in his home, and he knew he was going to the penitentiary, so he went down to the vault, got the money out of the vault and took that home.

Now Mr. Barnett—the rafters still ring with it. You can remember. He says that is unreasonable because Christmas Day the vaults are closed, he couldn't get in there, and he bases it on the girl's testimony. She didn't say anything about when they came back. Then he tells you that it is unbelievable that Paul would take it out of a safe place in the vault and put it in his home.

Well, I don't know how much Mr. Barnett knows about those things. Let's give him the presumption of innocence. But you and I know if a man and wife have joint box in the vault, and each one has a key, either one can go down while they are both living. But if it is some promi-
2302 nent person that gets a death notice in the paper, the moment those vault people know that, one of those joint owners has died, do you know what happens? A plaster goes right over it. No key; no entrance. The tax people have to be there because that is the method they have to see that the taxes are paid.

Paul wasn't leaving that $300,000.00 or any part of it for the tax people to grab onto. He knew that before he went to the penitentiary that they kept rooting and reinvestigating, looking for tax money.

Then Mr. Barnett argues to you and says oh, they wouldn't leave it up in the rafters. They only had a small amount of insurance.

Supposing you went to the insurance company and said I don't want just $10,000 insurance. I have got $300,000.00 in the attic. I want you to insure that.

They would laugh at you. They wouldn't insure it unless you had it put some place in the bank and gave them $300,000.00 to hold to secure themselves or some-

thing. You know insurance companies are not taking gambles like that.

2303 But Paul isn't a gambler. He wanted to do it in a way to protect his family. He didn't want the tax people jumping in there with liens on it or anything. He did it the way he would do it.

By the way, did you ever hear about the farmer that went to the zoo and he looked at the giraffe with the long neck. He looked at it and said, "There ain't no such animal," and he was looking right at it. That is because he had never seen one before.

You go by your experience and you have to judge people by the conditions they find themselves in. Did you ever stop to think that they would like to furnish you a lot of argument about how it is unreasonable to believe and it didn't happen that Joe counted that $300,000? But where is the witness that said he didn't count it?

I mean, you can't prove it the way they tried to prove it.

Here is the way they undertook to prove it. They told you to start with, "We will show you that Joe Bulger was telling an untruth because we will trace him back to the time he got off the boat and show that he couldn't possibly have had that money."

2304 But they didn't do that. What they did, they did just the opposite. They showed that he had available money, could get money any time. The insurance company needs $500,000 before they sign this group of bonds, and they got the money.

I dare say if Mr. Barnett should come in here this afternoon with some additional charges—you know, this is only up to 1950. He has indictments for 1951, '52, '53, '54, '55. Why, Paul could go out to the telephone and the money would be over here, wouldn't it? That is for bond.

Would you presume from that that he must have got it out of income? That is what they want you to do. Every time they find him with money during the indictment period, they want you to say he got that out of income. Look how weak they are.

I think it would be a good idea for me, if you are not getting tired, to tell you what it is I believe that they have to prove. What are the elements? What is the fundamental thing? What does the indictment charge, and what do they have to prove? Then we will go over it.

Would you like to take a little recess, Judge?

2305 By the Court: All right.

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2306-2309 * * *

2310 Chicago, Illinois,
Tuesday, May 27, 1958;
10:00 o'clock a. m.

* * *

2311 * * * By the Court: Do you want to talk to me before we bring the jury out?

By Mr. Barnett: Your Honor, I have two additional instructions which I would like to tender at this time.

I would like to withdraw Government instructions Nos. 19 and 7.

By the Court: 19 and what?

By Mr. Barnett: 19 and 7 I would like to withdraw.

By the Court: 7 and 19?

By Mr. Barnett: Yes, sir, and I would like to tender two new instructions which have been labeled Government's Nos. 21-A and 41-A.

By the Court: All right. Submit them to the Clerk. Bring out the jury.

(Whereupon the following further proceedings were had in open court, in the hearing and presence of the jury:—)

By the Court: Good morning everybody. Delightful morning, isn't it?

2312 All right. Let's go to work. Mr. Stewart, proceed, please.

And Thereupon Mr. Stewart Further Addressed The Court And Jury In Argument On Behalf Of The Defendant De Lucia.

By Mr. Stewart: May it please your Honor, ladies and gentlemen of the jury:

I think I should start by saying that Judge Miner showed consideration for us when he declared the recess yesterday, and that was helpful to you, I hope; I know it was for me.

2313 A judge doesn't have to do that, you know. He has the power, and some of them in this building have exercised it—you may have heard about it. You get to the end of the case, and the Judge says, "Keep on going, I have to finish this case," and you argue and talk until sometimes 2:00 or 3:00 o'clock in the morning. Everybody is exhausted, and that is the whole idea. But that is not conducive to a fair trial. It is not fair. It is not fair to you and it is not fair to the lawyers. But it is done, and we appreciate it.

Now we have to go to work, as the Judge said. I might say when we are talking about judges, that every law student has to, of course, study the history of the law which starts in England.

They had a judge back there, his name was Lord Jeffery, and his history and his infamous reputation has come down to us. If you want to say a bad word to a Judge, just compare him with Lord Jeffery.

I will tell you one of the things he used to do. Back in those days they used to send the jury out in a
2314 criminal case and let them go in a cold room and be there without food and drink until they arrived at a verdict for the Crown.

This judge I am talking about, he had to travel a circuit and go from town to town. If the jury was out there in that cold room and they couldn't get together and the judge had to move on to another circuit, he ordered the jury loaded into a cart and would drag them over to the next town and put them in another cold room and leave them stay there until they came out for the government.

Of course, we have made some progress since the days of Judge Jeffery.

2315 I would like to say that to start out, and I have had a little chance to think a little bit about Mr. Barnett's argument and I want to say that as I listened to his argument—it probably means more to me than it would to you, and I don't mean any reflection on you because you know your business. If I went out to your shops or watched you do your work, you would have to point out things to me that I wouldn't know about.

But, I know this business, and, of course, you would expect that I was watching him as he put his case in and he put it in like you lay brick, building a structure, and it occurred to me that we were lucky that he didn't have a better case because if he would have had it, he would have put it in there.

At that, we were going along and along and were in three-quarters of the case and we were still waiting and still wondering because he still didn't have that brick he needed or those few bricks he needed and he hasn't produced them, and, as a gathered from his argument, I think he is conscious of it.

Now, how much he realizes with reference to his weakness, I have no way of knowing. I will give him the presumption of innocence, or whatever you want to call it. I will say he believes that he has evidence on certain fundamental features of this case, where I disagree.

Now, that is an orderly debate, isn't it? I mean, if I point out what the things are that he needs to prove and then I point out where he hasn't proven it, why, we should prevail here if I am right.

And, I could tell from Mr. Barnett's argument that he knew pretty well what he had to prove and he didn't try to change it. He didn't try to flinch from it. Of course, he would be foolish if he tried to because the Judge, after all, will give you those instructions and the lawyers know what those instructions are pretty well because the Judge let's you know what the instructions are beforehand.

As I told you before, the Judge's instructions are more or less in legal form. It is possible they might not be as fully understood as I might be able to make some of them understood. That is my job.

Now, as I watched Mr. Barnett put in his case and as I heard him argue, I knew that he was following a certain pattern and, of course, that is the thing for him to follow because it is the leading case that we have on this type of prosecution, which is called the net worth method or expenditures method and that is the Holland case and it is in the Supreme Court and it is an opinion.

You know lawyers and judges have these opinions and they are on the library shelves and you can pull down the book. And, the Judge has already told us he has read it. Of course he has. Anyone who has this sort of case would read the Holland case and would find

out, if you read it, that the Supreme Court at first turned down cases that were offered to the Supreme Court on this method of proof by denying certiorari.

I suppose you know enough about our Government to know that our highest court, the Supreme Court, is not compelled under the law to take all the cases because the country is too big. They have a discretionary power.

They can refuse certiorari and the case doesn't come in at all. Or, they can take it where they think it is of importance and some law should be settled, and, so they announced in this opinion that these prosecutions are becoming more and more frequent and they are probably a little bit dangerous, too; it is about time we took one of these cases and announced what the fundamentals are in such a case.

2319 They announced—

By Mr. Barnett: Excuse me, Mr. Stewart.

By Mr. Stewart: —some of them—

By Mr. Barnett: Excuse me, Mr. Stewart.

Your Honor, I have sat here patiently all day yesterday and listened to Mr. Stewart ramble all over the lot. I think and I know the law will be given to the jury by the Court. I don't think we are supposed to sit here and listen to Mr. Stewart expound on the law, all the various Supreme Court rules and what they did and how they did it.

I think we should be limited to the evidence in this case.

By the Court: I have complete instructions. I don't think that counsel ought to discuss the law.

By Mr. Stewart: I appreciate it. I will concede to anything your Honor suggests.

I would like to do this, and I think it would be effective and welcomed by the jury: I would like to state the facts in the Holland case and then point out where they are

not in this case and it makes a great big difference, and, it is my way of arguing the fundamentals that Mr.
2320 Barnett practically admitted to the jury that he needed to prove to the jury.

By the Court: There is no objection to your pointing out the facts in this case, your interpretation. There is no need discussing the law. I have gone over the instructions. As a matter of fact, I went over them last night until 11:00 or 12:00 o'clock.

I have complete instructions on the legal phases, on the net worth and expenditure theory.

By Mr. Stewart: I will comply with whatever your Honor suggests.

By the Court: You may point out any factor that you think is missing in those cases.

2321 By Mr. Stewart: And I would like to start by stating the facts in the Holland case. Would that be permissible, your Honor?

By the Court: Yes, I will let you state them.

By Mr. Stewart: Because it is the leading case. I will do it briefly.

A husband and wife, Mr. and Mrs. Holland, were convicted of income tax evasion. They conducted a restaurant and tavern and it is possible they had some gambling in it, but, they were convicted on this sort of method we have mentioned here.

The Government went back into their history and it happens that they were working in the restaurant business. The man was a cook and the wife was a waitress.

And, the Government was successful in proving beyond all doubt that this couple was absolutely broke and had just small wages and, there was a depression.

At one time they lost their furniture because they couldn't pay a $25.00 installment and another time they had to separate, because they were in the kind of work

that the board and work goes together and they had to get jobs in separate cities and they had to live miles apart because of economic conditions.

Then, as time goes on, they were able to make some money, enough to get this business that they bought. And, the business prospered and as the business prospered, these people didn't pay the tax that they should pay, according to the theory of the Government and the proof of the Government.

And the way the Government proved it was that this same restaurant had been conducted by some other people for a few years before these Hollands acquired it. And, it made considerable money each year.

Then, when the Hollands acquired it, it stopped making that kind of money and that is what attracted the suspicions of the tax collectors, one of the things.

And then, the big difference between that case and our case is that Holland was investigated and he was called upon to explain things and he explained them and they used that at the trial. He explained that he had a thousand dollar hoard of cash out of which these expenditures were made and, in his explanation to the Government officials, which was proven at his trial, he admitted that he used cash registers that had those tapes on them and those were destroyed and he took money from the cash register to pay for personal expenses, which did not reflect in his books.

The Government officials asked him how long he had this one thousand dollar hoard and he claimed that he had it way back, at the time when he was young and at the time the Government was able to prove he was losing his furniture because of these foreclosures and things.

Now the question is discussed in that case as to whether or not the Government is allowed to use

this method of net worth where a taxpayer keeps a set of books.

This man Holland claimed that his books were accurate, and he objected to using the net worth method at all. But the Government was able to show that by his own admission the books weren't accurate because they didn't cover what he took in.

He admitted that he destroyed the tapes, and he could take money in in his business and it didn't reflect in his books. So the books were not accurate, and the Government had a good reason for rejecting them.

Then they were able to prove, as was attempted in this case, by tracing the financial history of the man all the way through—and they had something in that case that you don't have here. That is the reason I am calling your attention to it.

When he overspent himself during these indictment years, he had that business that was being conducted and he was doing a good business, even better than the 2325 other people who had it before him, and they were making huge sums of money each year. Then he drops down to practically nothing and is still spending money on personal things, buying cars, improving the property, and things like that. So they had him.

Of course, it helped where he was telling about where he got his money from. He got all his money from the business, and the business was shown to continue on and on and on.

Now, let's contrast that with some cases that are in the books. A policeman was prosecuted for taking bribes—

By Mr. Barnett: Your Honor, this seems highly improper.

By the Court: Objection sustained.

By Mr. Barnett: He is not talking about this case.

By Mr. Stewart: There is a point, your Honor, that certain things, activities are not presumed to continue on. That is the weakness of this case, your Honor. I would like to just mention it.

I don't see why the prosecutor should object when I am pointing out a weakness in his case.

By Mr. Barnett: I don't think he is pointing out
2326 a weakness. He is discussing everything but this case.

By the Court: Well, you have all the right to point out all the weaknesses in his case, but not weakness or strength in other cases because my instructions are going to be absolutely applicable to this case and no other.

By Mr. Stewart: I will put it a different way. I can comply with objections.

You make all the objections you want.

I can say to the jury, supposing you had a policeman on trial, and he is charged with taking bribes and they could prove that happened back ten years ago or eleven years ago because they had certain things that happened in the town. They had certain people who turned State's evidence or Government evidence, and they could conclusively show that he was taking bribes during those years.

2327 But they are prosecuting him for much later years, and all they are able to show in the later years was that he made large bank deposits of cash, which was way beyond the salary he was receiving as a policeman. But they had no case because he wasn't in a continuing business. You can't presume that the taking of bribes is something that carries on.

If a man is in the gambling business, he might be in it one year, and things might get tough and he might be shut down, and he might not be in that business during the indictment years. In other words, they don't have a source, a likely source.

They weren't warranted in rejecting Paul's books. You remember, I asked Mr. Stonesifer what he didn't like about the books. He considered them inadequate. Of course, that was just his opinion, but that is the object of cross examination.

I said where were they inadequate? Well, they just didn't suit him because he wants to make trouble for us.

They didn't contain a statement of the assets of
2328 Paul at the beginning of the opening of the books.

But there is nothing in the law requiring such statement to be there.

He didn't like it because it said miscellaneous with reference to income, and that is why he didn't like those books. I asked him, remember? I said if he had put down there the different people he got money from in gambling, you would have to go to those people to check to see if that was the amount.

He said yes. So that is why they want it. But they are not entitled to it.

As a matter of law, you notice Mr. Klein, he brought Paul in and spent three hours going over the same type of books. When I asked him, he gave me a little smile and said, well, that is the best they keep and that is what they keep, and that is the general practice among people who are in the gambling business.

Here, as this case was tried—Mr. Barnett wants me to talk about this case—I will tell you something about this case. We had these books here. He goes ahead and shows expenditures, but at the same time he doesn't show

you that every nickel Paul spent is in the books
2329 for the indictment years.

That is true, and you will have the books. I challenge anybody to show an expenditure which might in any way reflect on income, and not find it in Paul's books for those years that he was keeping books when

he was on parole. If course, he had to. He was on parole, and he had a lot of people on his neck, public officials with a lot of power. They had the power to send him back to the penitentiary, and he wasn't entitled to a jury trial. If they could have found something that he reported to them falsely, they would have sent him back, especially under the circumstances of this case.

2330 Here you have a case where they are indulging in a lot of conjectures and assumptions without any basis, and they want you to believe that a man who was on parole—and they say he is intelligent, and of course, we agree he is intelligent. Not only that, but Mr. Barnett has brought the books in here to show that Hoffman hearing and the Kefauver hearing.

You know, and those books show it, and it is in the record, that the Parole Board people were on trial. These Congressmen were trying, of course, they were making political hay, and they were getting headlines, and the Republicans were in charge of Congress and the Democratic administration under Mr. Truman was in power, and this Board was a Federal Board appointed by the President. The Congressmen were making hay and putting the Parole Board on trial and making them come before the Congressmen and justify this parole.

Not only that, but looking for a chance to send these people back to the penitentiary, which that Board had power to do, but the Board had to defend itself.

2331 They had to tell the Congressmen that, "There is nothing wrong with these parolees; these men were entitled to parole. They earned it and they are good parole risks, in our opinion, and we don't have any legal grounds on which to revoke the parole."

Paul DeLucia knew all this. Aren't you going to take that into consideration when you are considering his conduct in these years, and the only years he is indicted

here for are years he was on parole. He was on parole seven years, making reports monthly, which they haven't been able to upset or show false in any way except by insinuations by Mr. Barnett, without any evidence.

He insinuates that Paul DeLucia was still in the business of getting money out of gambling. I say he has no evidence from which to draw that conclusion. It is just the opposite.

Now, just to show you how litle things can indicate how the wind is blowing. Mr. Barnett told you yesterday, he said Paul DeLucia went to the Kefauver Committee. No, lawyer there. No lawyer to help him.

Well, I don't know what Mr. Barnett is trying to
2332 convey. Paul DeLucia had a lawyer. You would expect a man with his money to have a lawyer. He probably had the best one he could find, and that is me.

So he did go over alone, and it is my opinion—you have seen pictures on the television and in your papers of somebody that gets caught in these switches with one of these Congressional hearings, and they go over there and they have got a lawyer sitting alongside him. They whisper and they talk, and it just makes the law profession ridiculous because there are no rules of evidence.

The lawyer is not allowed to cross examine. He is not allowed to be confronted with witnesses. It is not supposed to be a trial, but yet those Congressmen and Senators can make a trial out of it.

So I won't lend myself to that. They were just picking on Paul, and I had him go over there by himself. But what did he tell that wasn't true? How did Mr. Barnett seize upon one little piece of evidence?

2333 You know, you can prove by the Bible that there is no God, if you only take part of it. You take that verse that says, "There is no God, saith the fool in

his heart," if you leave out the last part, it says, "There is no God."

The same way here. Mr. Barnett says that there is something phony about the Barnett loan. There is something phony about that loan from whatever that other person's name was, Matalone. Paul was borrowing money, so you must conclude he couldn't have had $300,000.00 because he was borrowing money.

That might be a logical argument if you didn't know some other things about Paul's situation.

Then Mr. Barnett says he was asked about that before the Kefauver Committee and he said, well, Senator, when I was a boy, I was told by my father to always keep cash on hand.

That is true. He said that. But that isn't all he said. You have the book here. Let me tell you the rest of it.

He said, Senator, I have been on parole and I want
to keep that parole. I have been told I am not
2334 permitted to associate with certain people, and I
am not associating with them, and I have to make it. I have to have enough money on hand to make it. I have got a long ways yet to go on parole, so I have got the money that I have got, but I went out when I had a chance, when I could get around and see some friends of mine, and I had them lend me some money because later on I might not be able to borrow it. Now I had the time and I talked to some of my friends and they loaned me my money, and I put it in, and I am trying to make a go of it, Senator. I am putting that money in the farm.

Now, they have told you that the farm shows no income tax due. That doesn't mean that it wasn't bringing money in. If you have those returns, you can look and see where it was bringing considerable money in, and more each year. But it just happened that Paul was in

that position a taxpayer finds himself in sometimes, where he takes off deductions for this or that, and the Government hasn't questioned those deductions. So it was gradually building him up with an income where he could point to it as far as the parole people were
2335 concerned, and say there is where my money is coming from. We reported every month, and I am not doing anything wrong.

You talk about people being intelligent. Some people are like birds that have been shot at. They have been hounded and they have been persecuted, and they know the power of the Government. Paul DeLucia was smart enough to know that the only way he could keep his parole was to do nothing against the rules because if he did anything, he would be back in the penitentiary where he thought he would never get out alive; and if he was sent back on violation of parole, he probably would never get out of there until he did the whole time.

2336 So they are asking you to deal in presumptions that the man not only overspent himself and reported it with every nickel and every dime to the Government, but he was doing it out of some money that he got during those years illegally. You know that can't be true because they had plenty of time to investigate, and they have gone over everybody with a fine-toothed comb, and they haven't put in one soul here to show where Paul DeLucia made a dollar that Paul hasn't admitted himself.

The only evidence they have got that Paul made any money is what Paul said he made.

Now if the times comes, if and when the time ever comes when they get me on trial for one of these things, I know I will be embarrassed, and a lot of other people will be embarrassed because they will go back to my

youth, and they will find some indiscretions that I had to pay for, and it wouldn't be very pleasant.

But they go over Paul's life, his times, and everything. Do you hear anything here where he spent any money in riotous living or wine, women and song? Do you find where he has given any color televisions to public
2337 officials, or anything like that? Nothing. He has led a clean life as far as his family and himself is concerned, and they don't have a case here.

Now let's take a look at what they think you might buy for a case. They know that they have to prove some kind of source.

Of course, you have opinions. You can't escape them. There has been a lot in the newspapers about these people. But here we have to try the case on the evidence that is in here.

I don't know what you thought about Mr. Barnett bringing that convict in here, but I will tell you how it impressed me. It showed their desperation. I knew what he was trying to prove, and you probably know it by now.

Remember, the convict sat there about twenty minutes telling us about his record? Then he winds up telling you that he knew Paul down in the penitentiary.

Well, supposing he did? No matter what he said that was before the parole and it was before the indictment years.

2338 Then he says he went and got some records out of the office and got Paul to look at them and took the records back in the office.

Then they get down to what they put him on to prove. He said that Francis Curry came down to the penitentiary. Joe Accardo came down to the penitentiary. Well, who is Francis Curry, as far as this record is concerned?

Francis Curry was paying so much an acre and operat-

ing the farm. It would be natural for him to probably have some difficulties that had to be straightened out, and he went down to see the owner of the farm, Paul DeLucia.

2339 So Paul, according to this convict, said to this convict, "These fellows come down to see me when they are in trouble, and I wish they would leave me alone and not bother me with their troubles."

What does that mean? It could mean almost anything. You are supposed to take the innocent construction. Mr. Barnett would like to have you believe that that is evidence from which you could say, by the remark that was dropped, what kind of business is Curry in? He is in the slot machine business. Well, they want you to jump from that to the conclusion that Paul must have been in that business with him, but there is no proof of it.

But that is what they call proof. They don't do those things without thought. They bring that convict in here.

Then you heard me say, well, you have had enough trouble in this world, haven't you? I am not going to make more for you, goodbye.

I figured you would have sense enough to know that he hadn't said anything of importance in the case.

2340 Think about how easy it would have been to cross examine him. I could take some law student and bring him in here and cross examine that fellow. With that record?

First, I could develop and I could ask him how in the world after you have been in and out of jails all your life and penitentiaries, how is it when you get into Leavenworth you get a job with the warden, helping him keep records and assign prisoners to different places?

2341 And I don't know what he would say, but I would suggest for the next question he probably made that

by being an informer in the penitentiary. That is probably what he was. Then I could ask him how he got here from California, who paid his expenses, what other trouble he is getting into now, how the Government happened to find him, with thousands of prisoners.

Why should I go into that? When you analyze what he said, it doesn't mean anything.

Now, another one they put on—this is done intentionally to give you this evidence of source of income—they would like to show you by innuendoes that Paul was getting money from the slot machines or the bookie business. So, they put on a young fellow who was in business with Paul's son-in-law, Benny, and he winds up telling us that that concern did business in the electrical line in a lot of bookie joints around. The sheriff ought to send for him. The police ought to send for him. They have trouble proving the place is a bookie joint. We know there are bookie joints around, but
2342 you have to have some proof it is a bookie joint before you can accept it.

But, just remember he didn't say a word about Paul getting those jobs or having anything to do with them or getting money out of the jobs, did he? Yet, they want you to jump at the conjecture and to the conclusion that because the son-in-law was around getting that kind of work, that Paul was getting money out of it. Who would have the best evidence how much he got paid for the work? It would be the contractor.

Don't you think the agents were out there talking to the contractors? Don't you think the contractors know how much was made, what taxes were paid on it and all of that?

They don't bring in that kind of evidence. They bring in evidence that some fellow who was a partner, bought out the business. What did it amount to when you boil it down? It amounts to nothing.

So, there you have it and Mr. Barnett said to you in sort of a challenging way—it is kind of clever—he said,

"This case boils itself down to whether Paul De-
2343 Lucia had $300,000.00 in the attic. If he had that money, we might as well close out this case."

Well, that sounds dramatic, but we may never get to that point. I don't have to meet that sort of challenge so far as Paul DeLucia is concerned, because you know from the indictment that the only time, and the only reason the Bureau of Revenue had any jurisdiction over this matter would be if Paul owed them some taxes.

If Paul didn't owe them taxes and if they haven't been able to prove a tax case here, you would never get to the question of whether that $300,000.00 was in the attic, in the basement, or wherever it was, so long as Paul had it.

Now, they say, "Well, we have shown, we have shown you that Paul has denied getting that money, that movie money" or "extortion money" as they call it. Well, supposing he has?

But, don't you think that Mr. Barnett ought to make up his mind by now. He is a lawyer. He has has a lot of time to think about this case. Don't you think he ought to make up his mind whether Paul got that four hundred and four thousand or one million eight hundred thousand or any part of it.

2344 He blows hot and cold. He puts in evidence that the money was obtained and puts in some figures. They come in with some Kefauver Committee reports and Hoffman reports and show that Paul says he didn't get the money.

These things can all be explained. These things can all be easily explained. I am going to give you a definition of a lie that I like.

A lie is an untruth to a person who is entitled to the truth on that subject.

I will repeat that: A lie is an untruth to a person who is entitled to the truth on that subject.

We are all placed in positions sometimes where we have to tell a little falsehood or maybe a big one. You can imagine those situations as well as I can, but let us bring that right down to this case.

A prisoner serving ten years in the penitentiary naturally talks with other prisoners and finds out something about how they operate. They are granted what they call hearings before the Parole Board members when they visit the penitentiary.

2345 You can imagine what those hearings are. You can also picture that the prisoners probably talk among themselves and they let those Board members hear what the Board members want to hear. They want to get out of there.

So, if a Board member goes down there and asks Paul DeLucia in the penitentiary—this was all developed in the Hoffman hearings. It is not news to Mr. Barnett; he knows all about this—he told Mr. Rogers, Judge Rogers, the heard of the Parole Board, when Judge Rogers asked him if he got any of this movie picture money, Paul said, "No."

Well, maybe that wasn't the truth; I don't know. Maybe if Paul said, "Yes," he would still have been in there or he may have died in there or something.

So, he put himself on record and there was a stenographer there and they took a statement.

Then, along came the Congressmen. They want to not only put Paul back into the penitentiary—that is part of it—but, the main target was the Board. They wanted to disgrace them before the public, show
2346 them there was a mess in Washington conducted by the Democrats.

The Board members had to protect themselves and the Congressmen were saying, "What were you told by Paul DeLucia? What investigation did you make about this money?"

And, the Parole Board people had to say, "He told us he didn't get it."

Hoffman said, "Don't you think you should have made a more thorough investigation? Don't you think you should have required that money to be paid back to these movie people before you let them out on parole?"

So, Paul DeLucia was committed, but, he was called before that Committee. What was he going to say? He was on parole and he was asked again, "Did you get that money from the movie people?" And he said, "No," which you would have said or anybody would have said, regardless of the facts.

2347 Then, after he said it under oath before the Hoffman Committee, he is brought in before the Kefauver Committee and he is asked again, "Did you get that movie money?" And he said, "No."

What would have happened to him if he said, "Yes"? He would have been indicted for perjury. He would have had two different statements under oath.

So, if you explain things in that way, you find that they don't have anything, that it doesn't mean anything.

And when the Congressman says, "Well, didn't you demand that restitution be made?" And the Congressman didn't care what the record showed in the New York case, which showed that the people who gave the money, charged it off in their income tax as expenses; it was disguised in their books. You have got a list of checks there. Do you think they were giving checks to Bioff and Browne on this shake-down money that was given freely by them? You don't know, but, anyhow, it was covered up and those movie people weren't asking for their money back.

2348 Some Congressman that was trying to make headlines was saying, "Why didn't you get the money back?" That is how unreasonable they are.

That hasn't any place in here. If they don't have a case, if they haven't proved these things which they have to prove, there is no use of us talking about it any more.

Let us do a little arithmetic. I want to be sure you understand what was developed here with Mr. Ruggaber. If I gave you an inference that these agents are crooked and are all shakedown people, I want to qualify it a little bit. There are some honest ones. You know, there is bound to be.

Mr. Ruggaber I would put in that list. He was very frank in answering me. It took me a little while to understand it and I want you to understand it.

Let us take their arithmetic. Now, if I can understand it, you can understand it. I am not going to go into little figures of a dollar and a quarter here and a dollar and a quarter there. I am going to get into
2349 big figures. You had these charts. They put big figures in the indictment. They wind up with smaller figures.

But, Mr. Barnett told you if Paul had the $300,000.00, then that is the end of the case. I will amend that a little bit and say if Paul DeLucia had the $300,000.00 anywhere, that is the end of this tax case.

Now, here, let us see where we can find that $300,000.00. In their whole case we can't find it.

Now, you remember what Mr. Ruggaber did and it is kind of repetitious, but I want to make sure you understand it. He sat down in his office and he made out a report upon which a ninety-day letter was written showing what Paul and the rest of them owed.

He took four hundred and four thousand of what he figured each one of those people got out of that movie money. Then he took Paul's return and each place where he found on the return "Miscellaneous" he gave Paul a break; he said, "I will figure you are putting part of the four hundred thousand in there," and reporting to the Government and paying tax, but, that may
2350 never have happened. Paul may have gotten the four hundred and four thousand and put it in his pocket and put it in his attic or put it in his vault or anywhere, so far as Mr. Ruggaber knows.

And, here is the difference: You start doing the figuring right from their figures. They wind up with giving us about $232,000.00 after they take this 177. You know if you had those figures before you, the part that Mr. Ruggaber gave Paul credit for was about a hundred and seventy-seven thousand. Paul paid tax on that much during those years which Paul called "Miscellaneous."

Well, if that was under income, then Paul had just that much more money you have in the beginning of this period that they are talking about in the indictment.

So, if you take their figures, you will find that $232,000.00 which Mr. Ruggaber winds up with as being in Paul's hands—then they don't have enough.
2351 You see, if they refigure that the way you should refigure and say, it is just as reasonable to say that Paul was getting the $400,000 and putting it in his pocket and also getting "Miscellaneous."

What was Paul doing, just sitting down and getting fed from that money and getting no other money? Do they want you to believe that? They can't ask you to believe a thing like that.

He was reporting miscellaneous income. The Government people don't like that business of reporting miscellaneous income.

Supposing a man in some gambling business or something like that decided that he would be honest with the Government and he would comply with all the regulations? Well, you know where that would lead him. You have to make what is called "Information Returns."

You know enough about the tax laws to know that. If you get something that is over 600 bucks from somebody, you have to inform the Government by making out a little slip and that is for the Government, so the Govern-
2352 ment agents can go over and see that person and see if they are paying tax on that.

Supposing a gambler sat down and said, "I had an expense of a thousand dollars, paid to Captain So-and-so of the police force"? What would happen? The Government would go over there and if he would say he didn't have it at all, of course the joint would be closed if that happened, you know.

So, Uncle Sam is a partner of these fellows, but he treats them rather shabbily. He should understand they have expenses, so long as they pay the net amount. You know what happens with the fellows in a gambling business. They don't want trouble with the Government.

They pay $75,000, $80,000 a year in taxes. What is it for? It is sort of insurance to keep those agents off their necks. They want to live up to a certain style. They pay that package.

Paul DeLucia—you know enough about his affairs now—he could have stopped anytime and said, "I will pay you nothing. Go out and find where I have made some money."

Well, they haven't.

2353 These agents, they came from New York. They came here from New York and they have a big bunch of files. They haven't found one nickel that Paul made that wasn't accounted for.

If he wanted to get in trouble with the Government, he would have filed these returns where he doesn't have any profit or where he had a small profit.

Take the ordinary businessman. He has got 100,000 and he gets some idea, like Eskimo Pie, or something like that. It looks like it will make a lot of money. He puts his capital into that and he has a lot of trouble with the Patent Office and making arrangements for this and that and then it hits, the public catches onto it and it sells and he makes $100,000 the first year.

What does Uncle Sam do? He wants $90,000 and he gets it.

Supposing the fellow loses the $100,000? Where is Uncle Sam then?

He is not around. He doesn't care about what you lose.

2354 I am not going to spend a lot of time talking about things you can figure out for yourselves. You get into a kind of mess about these things because of the conduct of some of our lawmakers.

I suppose I could get into a controversial thing if we were deliberating and brought up the subject should we have legalized gambling.

2355 There are persons and groups who would argue about it. One thing about it is if you try to get it, you would get opposition from the church people and the reform element. But, you would have opposition from the police, too, because if you had it legalized, you would have to rig it up.

Here you have the ridiculous situation of passing a law to make it legal to bet at the race track and you have the Government passing the law that you pay $250.00 for each year for a slot machine. They want their profit out there and they want their pound of flesh and they come around and hound and harass, and Mr. Barnett stands

up before you and makes an argument which could be laudible except in this case.

He said the Government needs the tax, the service needs it for research, the geophysical year.

They have spent more money harassing and hounding Paul DeLucia than they have gotten in taxes from him and they spent it before the trial. Don't let them talk about taxes. Let them give a little better accounting for the ones they get.

2356 I am going to talk to you about another subject that hasn't been mentioned here because it is kind of a man-trap and one of the most dangerous things you come up against in one of these courts is conspiracy and indictment, because, a lot of times, the jury mean well and they figure, "Well, there isn't enough proof on the charge that is in those counts but this conspiracy, we will convict them with a conspiracy."

Well, you have no right to do that unless you have the evidence. In order to have the evidence, you have to know enough about what is required to be proved.

The Judge will give you an instruction and it will say conspiracy is an agreement between two or more persons to commit an unlawful act or to commit a lawful act by unlawful means.

Well, of course that last part doesn't come in here at all.

So, you have got a conspiracy charge in here and it says that these people who are on trial and those two only, and if you put one, you have to put both of

2357 them— because you can't have a conspiracy unless there are two or more people.

The indictment says Joe Bulger and Paul DeLucia conspired to make these false statements to the Revenue people, which was within the jurisdiction of the Revenue people and, if you find them guilty of that, you find them guilty of conspiracy.

Now, in the State court where Judge Miner served most of his time as judge, the conspiracy can be complete if the parties get together and agree; if the State can prove in some way there was an agreement—why, then that is a crime, the agreement is a crime.

In the Federal court they have added something to that and that is where the overt acts come in.

In the Federal court there must be an overt act in addition to the agreement.

The Court will instruct you. Of course, it is one of the dangerous instructions. They say that under the law it is not necessary for somebody to listen in and to have heard the people agree. That is true.

2358 The agreement can be proven by the actions of the parties and that is true of any crime.

I want to give you a supposition and that is to show you how you can prove a conspiracy circumstantially, a case where there couldn't be any question about it, without any of this business about taxes and so forth.

2359 Supposing two young fellows sitting in the bar room in a saloon agree to go out and rob with a gun? Now, if a bartender overhears them and informs on them and appears as a witness in court against them, they will probably have direct evidence that those two young fellows sat down and made that agreement.

Or, if one of those young fellows, after the arrest, turned State evidence and if an accomplice witness says, "Yes, we had the agreement, we made it in the saloon," that is direct evidence.

But, they don't need to have that. Now, supposing these young fellows after they make that agreement in the saloon go to the bartender and borrow a gun? That might be regarded as a step of preparation.

There is quite a controversy you can get into, a difference of opinion, about what is a step of preparation and what is an overt act.

But, I will carry this imaginary conspiracy a little further.

Supposing the Government doesn't have any evi-
2360 dence of the agreement itself having been made but they have witnesses who saw these young people what it was that they did and they saw, this witness saw a pedestrian walking along a certain street, saw one of the young people coming down opposite him on the same side of the street, saw the other companion coming down on the opposite side of the street, and that companion stepped off the curb and walked across and the two young people convened at the point of the pedestrian and one of them produced a gun and the other one went into the pockets and not a word was spoken but you could tell from the conduct of those people that they were engaged in something by a concerted action which was an unlawful commission, a conspiracy—you can pick out any one of their actions which they did, which was in furtherance of that conspiracy and you would have an overt act.

You could take where that young fellow stepped off the curb and started to go across the street. It is something public, something manifest. It is in furtherance of the conspiracy.

2361 Now, that overt act is necessary and it has to be committed by one of the conspirators. If the witness said he saw the young fellow's mother come out and step off the curb and walk across the street, you know the mother, she is not in the conspiracy. She can't commit the overt act.

So, once you get an understanding of what is an overt act, you can kind of imagine how I might feel when I picked up this indictment and find my name in it.

2362 And you know it is in there because one of these overt acts was committed on September 1, 1954

when "I, Paul DeLucia" appeared in the Revenue office and Tom Smith was in charge of the group. Mr. Bernstein was there. And we read it to you like a play.

They say in their indictment that that was one of the overt acts. They say in the top part of the indictment, or in part of it there that it was an overt act because Paul caused us to make false statements.

Now, it couldn't be an overt act unless we were in on the conspiracy, and we weren't. There is no proof we were.

You heard what I said. Did I tell them anything that I represented to be a fact? I read my part to you. Did I tell anything that I represented to be a fact? I practically said, "You have no case and you can't prove it and if you think you can, go ahead and try."

But then Mr. Bernstein and I—both—he said, "What are you going to do about the $300,000.00 that Paul
2363 DeLucia testified to before the Kefauver Committee?" We were asked questions. We weren't stating what the facts were.

They told us they hadn't made up their minds about that. And, they call that an overt act. Then, you have another overt act where Joe Bulger went up into the Revenue office. But, Paul DeLucia wasn't there and I wasn't there. And Paul DeLucia is entitled to the same kind of trial as if he were here alone. Other people can't make evidence for him or against him.

So, they are lacking in their case. This business of it being a man-trap or a conspiracy, they just don't have the evidence. If they can't prove the guilt of the crime itself of his evading the payment of the taxes, you can throw the conspiracy out, too, because there is nothing to it.

Well, I am about through. I wish I could read your minds or I wish I could hear some of your discussion

when you start out on something and I wish the procedure were such that you could ask me some questions.

But, I might add this: You know you are dealing
2364 with, as Mr. Barnett said, "These people are intelligent." If they rise at all, they have to rise in a jungle where it is probably harder to rise than it is in other walks of life.

They become quite realistic and they learn from experience the best way to not get caught at something is not to do it. You don't find them around talking, or talking about their business. They, of course, have a little different viewpoint than you folks have, but, give Paul DeLucia credit. I mean, he isn't going to put his head in a noose.

2365 You couldn't picture a man—and they say he regarded his family as something to protect and he told those Senators, he said, "I want to make it."

He had a responsibility and he had the money and do you think if it was money—now, don't forget this:

Mr. Barnett told you in his opening and he has to tell you in his closing that if that money, it doesn't make any difference where it came from—they could have stole it, got it from other people in the crowd—if they had it before the opening period here in the indictment, that is the end of the case because Mr. Barnett has to satisfy you from the evidence that—Paul DeLucia while he was on parole was having to make reports to his officers and was having them out there and having them check—he was getting income.

"Now, Paul, the only way he could get income is probably through something illegal. He is not trained for anything." And, of course, he is trying to build the
2366 farm as a source income so he could show these people he had something that they could trace.

And who did he deal with in connection with that farm? What companies did he deal with? Armour Company. There was nothing wrong with who he was dealing with.

He was careful to keep himself clean and this is his reward. He was put on trial here and it is dangerous to be put on trial.

And, I wish, if you have something troubling you I could find out what it is, but I can't. I have done the best I can.

I told Mr. Barnett before he made his argument that I wasn't going to object because there is no use interrupting and I am going to adopt that same policy when he closes here. Let him tell you anything he wants.

But, each time he tells you he has proved something, you try to remember what the evidence is, and see if he has proved it and see what he says about what I have said to you.

He has indicated, when he started out, that he would
2367 prove that the money came in to Paul as income during the years charged in the indictment. Now, they have no such proof, and, without that proof, of course, they have no case.

I am going to thank you now and, I am going to thank the Judge again.

* * *

CLOSING ARGUMENT FOR GOVERNMENT.

2468 * * * Now, that was the the tax paid. That was the tax settlement. I mean, it was eventually settled for a lot less than what the Government charged. But that is the thing that the Government went into in 1945.

Now, if you recall, Mr. Bernstein had conversations with Mr. Marsh, Mr. Clayton Marsh.

2469 And, Mr. Bernstein told Mr. Marsh, not once, but several times, that Paul DeLucia had reported all

of his income on those returns for that earlier year.

And the inference is left with you here that Mr. DeLucia settled that tax liability in order to be free to go out on parole.

I don't know whether it is true or not.

The current claim is if you have a tax liability outstanding against you, you can't be paroled from the penitentiary.

I don't know whether that is true. I don't think it makes any difference.

The fact is eventually DeLucia, through Mr. Bernstein, agreed to pay the tax, not on the additional tax charged by the Government of $227,000, but one-half of it, a little better than a half, $114,000.

So, in that proceedings he was claiming not to have received $404,000. He was claiming not to have received anything and was settling this thing purely as a nuisance matter in order to be available for parole.

2470 I may come back to that subject a little later but I would like to continue on another point.

Incidentally, Mr. Green mentioned that the Government must prove this case beyond all reasonable doubt. That is not true.

The Government must submit sufficient evidence for your consideration from which you may determine the guilt of these defendants beyond any reasonable doubt. There is a big difference between "all doubt" and "reasonable doubt."

His Honor, Judge Miner, will instruct you on what a reasonable doubt is. It is not some thing fanciful. It is not something suppositious. It is something real, something that would cause you in the normal affairs of your life to pause and hesitate before acting.

It is not these fanciful tales that have been told in this court room by the defense attorneys, unsupported by evidence.

Mr. Green made reference to the statement of Mr. Garden. Incidentally, everybody talks about Mr. Garden.

Mr. Stewart suggested that perhaps we had put
2471 Mr. Garden on without knowing what he was going to say, that he blurted out something that we had to explain later and couldn't understand it.

Mr. Gorman referred to Mr. Garden as having told that fantastic story. Mr. Green, on the other hand, he wants to adopt the story of Mr. Garden. They are not sure just exactly where they want to go on it.

We know where we want to go on the story of Mr. Garden.

2472 Mr. Garden testified, and it was beyond question —he wasn't cross examined, nobody asked him a question when he was turned over to the defense for cross examination—but, he testified that he had a meeting with several men, two of whom were DeLucia and Bulger and that, as a result of several of those meetings with this group of men, they began building the Italian Village.

He testified that the total cost, as he recalled it, of the Italian Village, was $180,000.00.

He also testified that not all, but some of the money that was spent in the construction of that village, funneled through Schmidt, Garden & Erikson, that the money came in there in currency; that when he called Paul the next day, Paul came in with the money. He didn't know how much it was. He did remember a figure of $18,000.00 which was one bill.

We put the books of Schmidt, Garden & Erikson in evidence and those books show that the actual cost of that village, I think, including Schmidt, Garden & Erikson's fee, architect's fee, ran a hundred and ninety,
2473 rather than a hundred eighty thousand. And they also show that of the funds that were expended for

the erection of the village, approximately ninety thousand was paid for through Schmidt, Garden & Erikson.

In other words, the other one hundred thousand was paid directly by the parties who were financing the Italian Village. The ninety thousand cleared through Mr. Garden and presumably Paul Salvi brought the money to Garden, so, Paul Salvi must have brought in ninety thousand.

Now, what is our point on that? They tell you that is a hundred and eighty. They forget about the "ninety." They talk about a hundred and eighty and then they say, if Paul had this kind of money, then he must have got it from somewhere, he must have been a bigger crook than the Government ever claimed he was.

They suggest he was a bootlegger from 1920 when he came in this country, to 1933. I don't know whether he was a bootlegger or not. There certainly is not a line of testimony with respect to that. There is not a pieee of paper in evidence that indicates that Paul DeLucia
2474 was ever a bootlegger. He may well have been. I do not know. He has never admitted that he was. He has never claimed that he was.
2475 One thing I do know is this, and if you will look at the history, you can see it so plainly. He lived in modest circumstances from the time he got off that boat until about 1934 and it was only in the '30's, when the extortion money started rolling in that his rise in living standards began.

Now, there is a presumption in the law, that the defense are inclined to criticize, that where a man files a return, the Government has a right to rely upon that return as truthfully reporting the man's income and the Government further has the right to rely, in a case such as this, on the man who is being charged with evading tax in a manner such as we have proved here—the government has a right to rely upon his previously filed returns.

* * *

2476-2477 • • •

2478 • • • Mr. Gorman has complained about the beginning of the conspiracy as charged in the indictment, being 1950. I don't know whether he said it or Mr. Stewart said it, but they tie in the statute of limitations some way. I don't understand it. I don't understand what they are talking about. If there is any statute of limitations problem involved in this case, his Honor Judge Miner will explain it to you.

But the date was selected, 1950, because Joseph Bulger told us in the grand jury that that is the first time he had a discussion with Mr. DeLucia about the $300,000.00.

To do him justice, he said that was the first time
2479 he discussed it with him after that fateful day in 1947 when he allegedly returned with the key to the tin box.

Another point Mr. Gorman, Mr. Stewart complained about was the inferences that I drew from the testimony of Shirley Torrey Dardis. You recall the original story. The first time this story was every heard, incidentally, was the story that Mr. DeLucia told to the Kefuaver Committee wherein he first starts off by saying, "I got mixed up on that. I had some in the vault and I had some at home. I went to the vault and I brought it home." This was just before he went away to the penitentiary.

2480 Shirley Dardis testified that she left immediately after the trial was over. She arrived home on Christmas Eve, the 24th day of December. The verdict was returned in that case at 10:00 o'clock at night on the 22nd.

Paul DeLucia could not have returned to Chicago any earlier than Shirley Dardis because the defendant must be there when the verdict is brought in. So I think my inference is very fair that Paul DeLucia, whenever he

got to Chicago, and Shirley said she went alone, whenever he got to Chicago it must have been no earlier than when Shirley Dardis did, if as early.

So obviously he had very little time to go to a vault, if any vault would have been open—I don't know, I think the vaults close at 4:00 o'clock in the afternoon. He would have had to get in some time before 4:00 o'clock in order to trot over to the vault in the First National Bank, take his money out, and bring it home.

Can you imagine Mr. DeLucia coming home after that trial is over and the verdict was rendered, and the first thing he does when he gets off the train, if the
2481 train was on time and if the train got in that early, the first thing he does is go to that vault and take it out?

There is no particular reason why he has to do it that day because they were home all week. He could have gone after the week-end was over. He didn't have to do it that specific day. But at any rate, I think the entire story is preposterous, to begin with, that he would have done it in that manner. I think the way Shirley told that story of how she came home on Christmas Eve makes it impossible for the act, that he claims to have taken place, to have taken place.

As a matter of fact, I think when he told that story to the Kefauver Committee, he wasn't even considering the relationship to Christmas in the telling of his story.

Mr. Gorman wants to bring me into this act. He wants to know what the prosecutor really believes. I am not afraid to tell you what I really believe.

I believe that the evidence in this case is as convincing, is as foolproof, is as airtight as any case I have
2482 ever seen anywhere or heard of or read of.

I think that the evidence in this case positively and conclusively proves both Bulger and DeLucia are

guilty beyond any reasonable doubt whatsoever, even beyond a fanciful doubt, I would say.

2483 He queries whether I believe that Paul DeLucia is a good family man. I don't know how well Mr. Gorman knows Paul DeLucia. I assume that Scott Stewart knows Paul DeLucia quite well.

I think Scott Stewart cast some aspersions upon my remarks about Mr. DeLucia being a good family man.

All I know about Mr. DeLucia is what is in the record here in so far as his family life is concerned. I may know many things about Mr. DeLucia and his affairs that the evidence doesn't show here, that I can't talk about and wouldn't. I say I may, I could.

But as to his family life, all I know is what is in the record. According to this record, he is a good family man. He has been married to the same wife since 1927. He has taken care of his children since the day of birth down to the present time. He has showered them with material goods. He has provided for their future benefit and welfare.

This we know from the record. We also know from the testimony of Mr. Gibson at Atlanta Penitentiary, Mr. DeLucia said there was no marital discord. The

2484 marriage relation was perfectly all right. Mr. DeLucia told Mr. Gibson that in 1944, April of 1944, four months after this alleged act whereby Bulger and he sat down and counted money in a tin box because he couldn't trust his wife.

Mr. Gorman wants to know "Would you want any relative of yours convicted on this type of evidence?"

I wouldn't want relatives of mine convicted on any type of evidence. I am sure you feel the same way.

What kind of evidence does Mr. Gorman want? What kind of evidence is there? I don't know what Mr. Gorman

would be satisfied with. I am sure, I am positive, that no matter what we brought in this court room, it wouldn't be enough to satisfy Richard Gorman, or would it satisfy Scott Stewart, or Joseph Green. No matter what we brought in it wouldn't satisfy them.

* * *

2485 * * * Mr. Stewart has certain criticisms to make of the evidence, the investigation, the agents, everybody.

He criticized at some length the fact that Mr. Paul Mahon took the stand and testified that he had checked the Probate Court records for estates in the name of DeLucia and Giganti.

If you were looking for an estate being left to Paul DeLucia, would you, as Mr. Stewart suggested, look under the name of "Schultz" or "Jones"? Who are the persons of whom Mr. DeLucia is a natural object of bounty, other than his own relatives, and his wife's relatives?

As far as I know, it is true his parents never came to this country, but his wife's parents did. There is no record of any estate leaving any money to them.

Actually, that is one of those supercautious checks
2486 that was conducted by the agents. They didn't actually have to go and check a record like that. I mean, they were not required to under the technical provisions of the law.

For what way? Because of this: The only explanation that has ever been given as to where those moneys came from that were expended in 1948, '49 and '50 was that there was $300,000 in a box, and Mr. Bernstein had submitted to Mr. Joseph B. King an analysis of funds available, where Mr. DeLucia got his money.

He didn't say a word in there about any inheritances or gifts, although he did include loans.

Incidentally, that analysis which he submitted has so many holes in it that it is laughable. He duplicates figures. He includes in there income twice, items like that.

It would be nice to have him explain that to you.

2487 But be that as it may, nowhere do we claim that Mr. DeLucia had received any inheritances from a man named Schultz or Jones, or anybody else, for that matter.

Mr. Stewart made a remarkable statement, I thought, just simply remarkable. He said this: These people—these people like Paul DeLucia, they report a token sum of money on their returns, $70,000.00, $80,000.00 a year, so that they will be permitted to live according to a certain standard.

Well, I think by now you understand this expenditure operation; that if a man is going to live in a house in River Forest and he is going to support four cars, two Cadillacs and two Oldsmobiles, and if he is going to have children in expensive schools, and if he is going to live well, nosey tax agents may be inquiring as to where he got his income.

If they find a man living on such a grandiose scale, and they can trace down those expenditures, and they find he has reported no income, they have a tax case on him.

So these clever people, the way Mr. Stewart tells it, it is out of the goodness of their heart, but these

2488 clever people report enough on their tax returns from miscellaneous sources so that if an agent comes in and he says where did you get that $25,000.00 that you spent on that house? He will say, well, I reported enough money to cover that.

If the agent finds that the man has received a check from a Las Vegas gambling house for $40,000.00, what did you do with that money? Where is that on your return?

"Oh, that is in that miscellaneous."

You can never trace it down. You can never be sure that that $40,000.00 that he got from a gambling house in Las Vegas is actually part of the $70,000.00 that is on the return because you don't know what else is on the return.

That is the way those people operate, says Mr. Stewart.

In other words, those people are above the law. They can report what they feel like reporting. The rest of us have to pay our taxes. The man that is in business, that keeps books, he has got to make them available to the tax collector and show him where his source of income is.

2489 But Paul DeLucia doesn't have to do that, according to Mr. Stewart. And then he wants to indict us for bringing a case against him.

He criticized Paul Mahon for jumping to conclusions. But he didn't like the answers that he got from Paul Mahon. He was all hot to get after Mahon when he was talking about the $10,000.00 on Ned Klein's report at the end of 1939. He thought that the Government had based the entire case upon the Ned Klein report.

I don't think for a minute that he didin't know everything that was in that report. And that is what he thought that he was going to get after Mahon and show that our figures were at fault because we had based it on Ned Klein's report.

He was confounded when Mahon explained to him we didn't use the admissions of Mr. DeLucia as made on Ned Klein's report. We didn't use that admission of Mr. DeLucia that he had had only $10,000.00 on hand at the end of the year. We credited him with having $190,000.00 cash on hand at the end of that year.

2490 He didn't cross examine Mr. Mahon very much

after that. He left him with the words, "I will recall you for further cross examination," but he never called him back.

He talked about Tom Smith. I asked Tom Smith to repeat one conversation that he had with Mr. DeLucia. In the orderly procedure with which we atempt to put in evidence, in my opinion it was not yet the time to put in evidence the story that was told to Smith, Stonesifer and Scholz, and that is why at that time I did not ask Smith about the conference that took place on September 1, 1954.

Mr. Stewart recognized that, and he said that he would like to cross examine Mr. Smith about that conference. He knew that he was not entitled to cross examine him about that conference until Mr. Smith had testified about that conference.

And so, with my agreement, he reserved his right to cross examine Tom Smith until a later date, after that September 1, 1954 conference had been put in evidence.

Well, a couple of days lafer that conference did go into evidence, but he never called Tom Smith back to the
2491 stand to cross examine further about that conference.

There was ex-Revenue agent Stonesifer on the sand. Stonesifer said that the books were inadequate to correctly determine net income for tax purposes. I don't know how many times he said that. Certainly every time Mr. Stewart asked him that, he said it.

He had specific reasons for it.

Receipts were being shown to have entered the books, credited to DeLucia's personal account, and there was no way from those books to tell where those receipts came from.

There were receipts that were shown on the books that you could determine from the farm. There were receipts

from dividends. There were receipts from miscellaneous sources, but there were large cash items dumped in the bank—I read the deposit tickets to you yesterday morning, part of them, at any rate.

Those deposit tickets are credited on the books to Mr. DeLucia's personal account, and who knows where they came from? Who knows?

2492 The only explanation ever given was that they were previously acquired funds— a ready answer. He has always got that ready answer.

"Tell me what you think I have spent, and I will have enough in the attic to cover it. Previously acquired funds."

Mr. Stewart, everybody, I think, complained about the witness Winkleblack. He was a pretty clean looking fellow to me. He has had his troubles with the law. He has served his time. He has been in no trouble for the last five years.

He served some time in Leavenworth at the same time that Mr. DeLucia was down there. He did some favors for Paul DeLucia, as men in prison, I suppose, do when a big shot comes down there.

2492 And he was present for several conversations between Paul DeLucia, Frank Maritote and Louis Campagna, the big three. He overheard some of their conversations. He overheard about Accardo. He knew Accardo and Curry had come to the prison. He overheard Paul DeLucia complaining about their coming down to prison.

They say—I don't know what they say, but they seem to think that we are not entitled to hear a story from a man such as that, to hear his testimony.

What does Mr. Stewart say when Mr. Winkleback had concluded his direct testimony? He said, "You have had a lot of trouble with the law, haven't you?"

Mr. Winkleblack said, "Yes, I have," very politely.

Another witness might have said, "So has your client." But, at any rate, Mr. Stewart said, "Get out of here. I don't want any more of you." Darned right he didn't want any more of him.

Nobody cross examined Winkleblack.

2494 Now, they want to impugn his testimony. The time to show a witness is a false witness is when you have him for cross examination, not after you have waived him off the stand and want to talk about it in closing argument.

The witness Wilczak said he was an employee of Alex Ponzio, son-in-law of Paul DeLucia. There is a lot of ifs about his tstimony now, but when he was on the sand, nobody wanted to ask him any qeustions.

He had no record. He wasn't a man who had served any time. He wasn't a man who had ever had any trouble with the law. He was a very honest citizen who had the guts to come forward and tell the truth. But, they didn't want to tangle with him on cross examination.

They want to indict the Sheriff of Cook County, now. There was some conversation about the Bennett loan.

* * *

2495-2497 * * *

2498 * * * There are quite a few questions that I would like to ask Mr. Hugo Bennett if I had him on cross examination. But, if I put him on, I have got to vouch for him. When I put a witness on, I am supporting the truth and veracity of what he says from that stand.

What did I feel about putting Hugo Bennett on? The next thing is, I would have to try and tear him down.

Another thing about that Bennett loan, Mr. Stewart commented that the witness Dick, of whom he did not ask a question on cross examination, repeated a story of

what Paul said about the second mortgage and he said, "You know, Paul doesn't talk too good, and you might have misunderstood him."

When he had him on the stand was the time to ask him questions like that, not when he is arguing here.

But, he didn't ask Dick whether he understood Paul, or how well Paul spoke.

2499 Well, I don't suppose any one of you has heard him speak in person, but you have heard read in the court room colloquies between DeLucia and Senator Kefauver and the Grand Jury, with then Assistant United State's Attorney Lawrence Miller.

He doesn't sound like an illiterate, hard-to-understand person, does he?

He sounds like a highly intelligent man that knows how to make himself understood when he wants to be understood.

2500 About that second mortgage. Everybody knew about the first mortgage when the deal was started upon. Why didn' Paul tell about the second mortgage? I will tell you why. It was such a phony mortgage that he had forgotten about it. It just didn't occur to him and the formalities of reporting it had slipped his mind. He had signed a paper in connection with that mortgage in Lawyer Butler's office and he didn't think any more about it. He didn't think about the circumstances under which Lawyer Butler would go and have it recorded, just neglected it entirely. So far as he was concerned, it wasn't a mortgage of record and he didn't know or he didn't realize it was a mortgage of record until Mr. Dick told him they had discovered it.

Mr. Stewart doesn't like that word and he says it is a prosecutor's word, but, they discovered it, they discovered it in their process. They weren't informed of it by Paul DeLucia.

Mr. Stewart complains about who is prosecuting this case. He complains about the agents. This case was
2501 brought to prosecution in this court room as the result, the end result—not of agents, not of officials in Washington, not of officials in Chicago, but, by the actions of the grand jury of the Northern District of Illinois, twenty-three people good and true, selected in the same manner that you people are selected; they came out of the same jury selection panel box as your names did and, before those people, the Government is required by the laws of the United States, to present sufficient evidence to give that grand jury probable cause for believing that a crime has been committed and that the persons who are accused are the ones who have committed the crime.

That is what brought this cause to issue, not the agents, not the attorney general, not anybody else in the Government.

Of course, it is true the Government agents had to investigate the case.

Mr. Stewart attempts to inject some partisanship in the matter. The agents on this case are all career men. Mr. Ruggaber has 38 years in the Government service.

Mr. Marsh having retired after 35 years, Mr. Mahon
2502 24 years in the Government service, Mr. Saldana, 24 years.

Everybody in here has talked about lies and the definition of lies. Mr. Stewart says that a lie is an untruth told to a person who has a right to know the truth. He is hoist on his own petard.

Here is a man who for years has denied he had anything to do with the extortion money and now he wants to claim it. It is history.

He lied to Mr. Gibson in the penitentiary. Mr. Green thinks that is pretty funny. He didn't tell him about the $300,000.00. He thinks that is a joke.

He lied through his agent Bernstein and to his agent Bernstein about the receipt of that money when he was charged with it for tax purposes.

He lied in the Hoffman Committee hearings. He lied to the parole grand jury. He lied to Kefauver about the receipt of the extortion money.

Are we to believe now that he had $300,000.00 in a tin box in his attic? This is a man who finds it virtually impossible to tell the truth. It is easier for him to
2503 tell a lie than it is to tell the truth.

Did you hear that arrogant remark of Mr. Stewart's?

> "If Paul went to the phone today, if he crooked his little finger, $500,000 would come marching in that door."

Whose money is that? Whose money is it? Are we to infer that that is Paul DeLucia's money? If it is, he is a bigger tax evader than we ever charged him with being. If it isn't, what does it mean?

It means nothing except that Mr. Stewart wants to put Paul DeLucia above the law because he is a bigger crook than the Government ever charged him with being.

Then, he tells us a few little secrets about how Paul DeLucia operates. He says he gives Barnett the benefit of the doubt, "If he knows of these things; he doesn't know these things; he thinks a man would put his money in a safety deposit vault."

That is what I think,—I know, if I had $300,000, I certainly wouldn't be hiding it in my attic. But, at any rate, we have to know how Mr. DeLucia's mind operates.

He says, Mr. Stewart, he is not going to put it
2504 in a safety deposit vault where in case he dies the state inheritance tax office will put a plaster on it and he will have to pay tax on it. He is not going to let that money get anywhere where it can be taxed.

In other words, Mr. Stewart says that Mr. DeLucia is inherently a tax evader. There just isn't any other answer to it. He doesn't like to pay taxes.

And, as a result, the rest of us must shoulder the burden of paying the taxes that he does not see fit to pay.

He sees fit to report seventy or eighty thousand dollars a year from personal gambling and then he makes no records available to the Government to check on that, never any records, never any supporting documents. He will give you the horse he won on.

Sure, I can pick the horses after the race is over. That is no problem.

What about this little story that Scott told us about how Paul operates on parole, and he knows; he grew up in the Jungle. I agree with Mr. Stewart, Mr. De-
2505 Lucia knows how to operate and Stewart knows he knows.

He said, "The best way not to get caught is don't do it in the first place—don't do it in the first place."

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2506 * * *

2507 * * * By Mr. Barnett: I just want to make one further remark about that $404,000.00 business. That has been kicked around all over the lot so much.

Mr. Ruggaber, after his examination of the extortion trial testimony, concluded that DeLucia received $404,000.00, and we gave him credit in this case for having had funds available in the amount of that $404,000.00.

The only difference is that we don't give it to him twice. We only give it to him once. The defense wants us to give it to him twice. They say that he got the $404,000.00, but that none of the money on his returns came from the $404,000.00.

During that same period of time when he was receiving the extortion money, he reported a total income
2508 from miscellaneous sources of $177,000.00.

Now since nobody knows the source and nobody will tell us what the source is, we conclude, properly so, that his biggest gainful employment was the extortion business; and so the money that he reported on his returns must have come, at least substantially, from that business.

By suggestion and by innuendo, Mr. Stewart would have you to believe that he was also in a business which he called the gambling business at that time, and that he reported this money from the gambling business, but he doesn't report extortion money. He puts that in his pocket.

I don't think extortion money looks any different from gambling money when you have got them mixed together, and I don't think he cared which came from which. His main business was the extortion business.

It may be that he had other illegal interests that we have not been able to prove in court, and which, God knows, the defense have not proved in court. It may be that he did have some other interests. But his big
2509 substantial interest in those years was the extortion business. That was a pretty big business in its own right.

When the extortion business dies out and things get too hot, there are other fields to go into. There may be more extortion that we haven't found yet.

Mr. Ruggaber and Mr. Klein told you that the phraseology "gambling" doesn't really mean gambling. That word, and the word "Miscellaneous" are used by people like Mr. DeLucia as a cover word for any type of illegal gains.

Illegal gains are taxable, just as my salary is taxable,

just as your respective incomes are taxable. Wherever you get your money, the Government is entitled to a percentage to run the Government.

2510 If the Government is entitled to collect income tax from honest working citizens, why should extortionists, gamblers, bootleggers, outlaws—why should they be allowed not to pay their taxes?

Mr. Stewart has criticized our books—not our books. He has criticized our method of proof. He has criticized our figures. He says our figures are not good, and that the books of the taxpayer, DeLucia, prove that our figures are no good.

I don't remember whether anybody else said that or not.

He says that under the law, that being the case, we are not entitled to prove his income by expenditures. As his support for that position, he cites the Holland case.

* * *

2511 * * *

2512 Do Mr. DeLucia's books accurately reflect his financial history to the extent that we can rely upon his books to know what his income is, and we need not go through these laborious machinations of determining his starting point and determining his expenditures to arrive at income?

They do not.

Mr. Stonesifer testified that he had examined these books; that those books did not make it clear where the income came from. Large sums of receipts were dumped in there, which were not identified as to source, and that thereafter as an agent it was impossible for him to verify whether or not the taxpayer had truthfully reflected his taxable net income on his returns.

2513 Mr. Stewart cross examined Mr. Stonesifer. There was never any change. That is the way the evidence in this court room stands. Those books are inadequate to determine taxable net income.

In his opening statement, Mr. Stewart said, "In order to make those reports—" Mr. Bernstein opened a set of books, and they are here, and Mr. Bernstein, when it comes our turn to put in evidence, will testify that those books are correct and accurate and show the disbursements made."

Mr. Bernstein has sat in this court room every day of the trial, and I didn't see him take the stand after the Government had closed its case because he knows, just as we know, that Stonesifer was right, and that those books cannot be justified.

Mr. Stewart said that he had two accounting experts sitting at the table, but that he decided as the case progressed that he didn't need them; that our figures were so phony that he didn't need accounting help.

We subjected the agents and the computations to a
2514 complete exposition. But Mr. Stewart didn't see fit to call Mr. Joseph Byrnes, who is also sitting at the table, to refute our figures because he knows, and Mr. Byrnes knows, that there is absolutely nothing wrong with those figures whatsoever, and if Mr. Byrnes had taken the stand, he would have answered the questions in the same manner as our agents answered the questions.

I will get you out of here in five minutes.

Back in the Fifth Century, it happens that St. Patrick's Day was in March, and I remember reading this article about St. Patrick. I just happened to recall it during the course of this case.

Back in the Fifth Century, St. Patrick dwelt in a cave called Crom Padraio, and there he dreamed. He dreamed

of a land of promise. Many centuries later, many people from all lands found that country.

One of those was Paul DeLucia. How did he treat it?

One of the native sons of that country is Joseph Bulger. How has he treated it?

2515 Let's get that story of how Joseph Bulger happened to go before Joseph King and tell the story about the $300,000.00.

2516 "Q. You must have told somebody about it before you told Mr. King."

Talking about the $300,000.

"No, sir."

I misspoke myself.

"You must have told somebody about it before you told Mr. King.

"A. Oh, Mr. Bernstein and Mrs. DeLucia was asking me about it and said—

"Q. Mr. Bernstein and Mr. DeLucia?

"A. No. Mr. DeLucia would ask if I would tell about this money to Mr. Bernstein.

"Q. When did he ask you that?

"A. I don't know. It was sometime after he got his money.

"Q. Sometime after he got his money?

"A. Yes.

"Q. Sometime after you counted it in 1947?

"A. Yes.

"Q. Well, when was it?

2517 "A. Oh, I don't remember when he told me.

"Q. You don't remember when he told you that?

"A. I don't remember when he told Mr. Bernstein.

"Q. When did he ask you to relate the story to Mr. Bernstein?

"A. A few days before we had this—

"Q. In 1954?

"A. Yes.

"Q. Well, did Bernstein question you about the story?

"A. No, he didn't.

"Q. Never asked you about it?

"A. No, he never called me.

"Q. Didn't he ever say to you, 'Paul DeLucia was with you when he counted $300,000?' Didn't he ever say that to you?

"A. No. Funny thing is, we never discussed it.

"Q. 'We,' who?

"A. Mr. Bernstein.

2518 "Q. Yes.

"A. Except when it came up on this hearing,"—Now listen to this:

"A. Except when it came up on this hearing. I don't remember whether it was three days or a week before, I said, 'I don't like to'—'I don't like to appear. If you can avoid it, I would appreciate it.'"

Is this an honest man who has counted money for a friend, who is going to bat for him when the chips are down? Why doesn't he want to appear if it is the truth? Or is he the fall guy that has been so indebted to these employers of his that his soul has been sold?

He must go in and tell that story, willingly, albeit.

He doesn't mind telling about money in a box. This isn't the first time that he has had occasion to account for money as having come from a box. He did it once before, at least, that we know of, in 1935.

2519 Mr. Green says I am naive. I don't know whether he used that word, but the implication was plain.

Here are men who have just been convicted of crimes. I might digress for a minute. The whole point of the de-

fense here is we have committed crime after crime after crime, but not this crime.

2520 "We are guilty of many crimes that we haven't been indicted on and crimes we have been indicted on but we are not guilty of the crime of which we are charged."

That is the prelude to what Mr. Green leads up to in this situation. He says, "Barnett is naive. Here is Paul DeLucia who has just been convicted of receiving extortion money, of a conspiracy to obtain it. Is that clever man going to put that money in a vault where anybody can find it?"

Of course, we can't go into the vault any more than we can go into a person's private home. We have got to have a search warrant when we go into a private home just as we do to go into a vault.

"Is he going to admit to Mr. Gibson down at Atlanta that he has the proceeds of the extortion money and have to give it back? No. What is he going to do with it? Why, he does the logical thing, sensible thing, the thing that a man born and reared in a jungle knows how to do. He hides it in the attic."

2521 Not for one minute do I believe that they hid it in the attic, not for one minute.

Not for one minute do I believe that those two men sat in Paul DeLucia's bed room and counted out $300,000.00 and $10.00 with that gold note Joe Bulger remembered so vividly, but, he can't remember whether he made out the 1943 tax return after he allegedly counted the money.

He can remember the gold note and he can remember counting the bills, one by one—not that I believe any of that.

First of all, it isn't logical. The extortion money wasn't received the day before they were convicted. It wasn't

received all in one lump sum. It was received over the years.

Picture the story they are presenting to you. Picture this story. This is what they have asked to believe: That on Christmas Day, 1943, Paul DeLucia sat there with his attorney and counsellor at law and counted out the proceeds of an extortion, after the trial on which he had just been convicted. His lawyer is sitting there with him. He secreted the proceeds of an extortion. What kind of nonsense is that?

2522 They are willing to have us believe that Joe Bulger would commit that crime but he wouldn't tell a lie; he wouldn't tell us that he went there and counted that money unless he actually had.

Ladies and gentlemen, I am through. We asked you for a fair consideration of all the evidence when we started in. I ask you for it again. I hope that you give due consideration to the evidence that has been produced in this court room and to the logical inferences which would flow therefrom.

I can conceive of no verdict other than a verdict of guilty and I ask you to be fair to both sides in your considerations.

Thank you.

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2-9 * * * Argument for defendant on Motion for new trial.

10 * * * When they undertook to go in and ask for the indictment, that was a secret hearing. There was no way we could stop that, and no way we could appeal to your Honor or to anybody. We couldn't stop them from going ahead and indicating the lawyer along with him.

Now we ask why that was done, and now we are in a court of justice and we have a verdict, and that will explain probably to the Court, that and some other things

—your Honor will remember that when this case was assigned to your Honor we didn't ask for any continuance. We didn't take any time trying to influence your Honor's mind by saying this is a weak case, and all that.

We were certain they didn't have a case. That
11 should speak louder than words. When I went over to see Mr. Barnett the first time concerning making a stipulation, at that time I told him you have got certain weaknesses in your case, and I don't believe you are ever going to overcome them. What I would like to have a stipulation for is that we are in danger that there will be some confusion in the jury if we sit there for nine weeks, which was the estimate Mr. Barnett made concerning the length of time this case would take. If we are there nine weeks over something that doesn't really mean anything, the jury is apt to feel that they have a big case and they can prove their case.

But by taking the position we did, we have to have confidence in your Honor with reference to this point we are in now. I don't want to be real dramatic, but I don't want any misunderstanding. They wind up with three verdicts that are not worth the paper they are written on, and they expect your Honor to sustain them, otherwise they wouldn't be here.

Let's take the legal effect of that not guilty verdict.
12 You must remember while we were trying this case, and I will take credit for this, I don't do things that I know myself are useless. I know from these cases, and I don't mean any reflection on Mr. Barnett or any lawyer, but when you have heard it over in the State Courts, when a conspiracy case is on trial no matter what a witness starts to tell about, he might tell about the weather up in Alaska or something; and it doesn't sound to the the judge like it has anything to do with the case, but

if the lawyer for the defense is foolish enough to start making a lot of objections, the prosecutor just says, "We will connect it up, Judge." Then the judge says, "All right, we will let it in subject to your connecting it up."

We didn't do that because we felt that if they couldn't connect the things up they needed in the case that they would not have a verdict that was worth anything.

* * *

13-20 * * *

21 * * * And you were trying to be fair. We have come to the point now, and I want to repeat it again, everything your Honor did you did in a nice, gentlemanly way, and we all cooperated. We had a case tried in a way that your Honor complimented us for, and I can compliment your Honor back, but your Honor can make mistakes of law, and that is what this is.

* * *

22-28 * * *

29 * * * But a rather strange thing did happen, and let's say it was inadvertent, and it put your Honor in a trap, in this way.

Mr. Barnett handed me a big bunch of instructions, after waiting a day after he took mine. He was taken a little bit by surprise, maybe, that we rested. I have no complaint about the fact that you gave him until the next day. But then he gives me a bunch of instructions, and I find from talking with him and by looking at them that he has copied some of ours.

Well, what he tried to do was to fix it so you would just throw ours aside and give the ones of ours that he was willing to approve. But your Honor didn't go along with that. Your Honor recognized some instructions of ours and felt that regardless of Mr. Barnett's idea about

it, you were going to give ours and try to be fair
30 with us.

You will remember the time was getting short and I wanted to preserve my energy for the argument. I didn't want to fight and argue with your Honor about which ones you were going to give and which ones you were going to refuse. The case had gotten so weak. It wasn't an accounting or bookkeeping case any more, and I was hoping we could win it.

But what happened? When I heard your Honor give the instructions, there was a new note—you know, it is like a person listening to music, and he knows the music, and he hears something that is off.

Over here, you know, it is a hard rule on lawyers, but when the judge gives instructions before the jury takes the case finally for deliberation, the lawyer must point out something he doesn't like so the judge will have a chance to correct it.

You will remember when your Honor invited us into chambers, we didn't want to do that, or I didn't, because that is a waste of time. We had hopes of winning the case. Remember, I said more or less facetiously, I
31 said I don't care; so long as you don't put one in there to find the defendants guilty, why, I will take your Honor's judgment. But at that time I had looked over what they had prepared, and I knew that there wasn't anything particularly dangerous.

* * *

32-42 * * *.

43 * * * By the Court: What do you say about De-Lucia's constant statements under oath that he never got the money, the $300,000.00?

By Mr. Stewart: I am glad your Honor asked me that. You heard what I argued to the jury, and he wasn't on

trial for telling truths or untruths. That is a point that I am glad your Honor reminded me of.

44 Litigants every day that are before you are not permitted under the law to take one position and go of record with references to something, and then turn around and take a different position later when it is their advantage to do that. You can't have that in fairness.

The Government took a position that Paul had that money, that $404,000.00. They did it arbitrarily, and all that, but they are stuck with that. It doesn't matter how many times.

You can explain why Paul would deny it. They were trying to put him back. This Congressman Hoffman, if you would read the rest of that report, I could have brought it out, but I didn't want to get tangled up with him. They had a weak case, and why should I give him a chance to murder me in your Honor's court room?

But he was seeking to make Paul and these fellows make restitution, which was none of his business. Naturally they were saying they didn't get that money and it shouldn't make any difference to your Honor what money it was.

By the Court: Except the jury right a right to believe it, and the jury is the judge of the facts.

45 By Mr. Stewart: How do you know what the jury believed?

By the Court: I said they had a right.

By Mr. Stewart: That is right. How do you know what the jury believed? We are entitled to a trial, to point out these weak spots, and it is the function and duty of the judge, if he can see any weak spots and any circumstances can be explained one way or another—if the way I look at it is reasonable, you are supposed to take it my way.

* * *

46-54 * * * Govt. argument on Motion for new trial.

55 * * * I might mention in passing here that Mr. Stewart in his argument to you this morning referred to a document prepared by Mr. King and lumped it with the document, the review memorandum, prepared by Mr. Smith.

If you recall, Mr. King was on the stand and testified that he had a conference with Mr. Bernstein and that
56 he subsequently had a meeting with Mr. Bernstein and Mr. Bulger, at which Mr. Bulger gave testimony which was transcribed.

Mr. King had this file in court with him when he came here. I asked him item by item if he had prepared a memorandum of various conversations and telephone calls and everything else down the line, had everyone of those documents marked for identification, and I offered them in evidence. The defense objected to the introduction of those documents in evidence.

As a matter of fact they permitted to go into evidence the transcript of Mr. Bulger's statement and upon my reoffer, I believe, there was no objection to a certain conference memorandum held with Mr. Bernstein which had attached to it copies of documents that had been submitted by Mr. Bernstein.

So there were two documents of Mr. King's that were received in evidence, and there were numerous other documents which I had offered in evidence and which had been objected to by the defense, and which your Honor excluded.

Mr. King was not cross examined and no request was made upon me and I heard no request made upon
57 the Court that any other document of Mr. King's be turned over to the defense. So I don't know why at this particular point he is referring to apparently a report that has not been identified other than those documents which I offered in evidence.

* * *

58 * * *

59 * * * Furthermore, despite Mr. Stewart's statement that he didn't have an opportunity to read that instruction, it is true that I tendered this instruction late, but I tendered it in open court right here at this pulpit, and I handed him a copy, and I handed Mr. Green a copy and I handed Mr. Gorman a copy at the same time, so he had ample time to familiarize himself with the
60 instruction before the charge was given because this occurred before our arguments to the jury.

I would like to make mention of this, your Honor, that Mr. Stewart criticizes me for having incorporated within my instructions the instructions of the defendants. I didn't do that with any malicious intent, in order to subvert the position of the defendants.

I explained to the Court and to counsel here that my reason for doing it was that the defendants had submitted their instructions several on a sheet, so that it was impossible for the Court to segregate them. I submitted my instructions one after another on separate sheets, so your Honor could give or reject them as he saw fit.

I tried to incorporate within my instructions all of the instructions of the defendants that I felt they were entitled to have. Your Honor did not accept my consideration as to what you should give, but you gave considerable more of their instructions than I felt they were entitled to.

* * *

61 * * * Mr. Stewart made reference to Mr. Garden and $1,800,000.00. Mr. Garden did not testify to any $1,800,000.00.

62 He testified that the cost of construction of the Italian Village was $180,000.00, and that he had received large sums in currency from Paul DeLucia during

the course of the construction of that building or that Village.

The records of Schmidt, Garden & Erikson show that approximately $90,000.00 was handled by Schmidt, Garden & Erikson, and that the remainder of the cost of the Village was handled by the parties, the group of people, handled by them themselves without clearing through Schmidt, Garden & Erikson.

We never said, and we don't know to this day, whose money that $90,000.00. Joseph Imburgio Bulger in the bankruptcy testified that $45,000.00 of it was his and $45,000.00 was Eddie O'Hare's. However, DeLucia wants to claim credit for that money.

All we say is that whatever money belonged to him that went in there couldn't have come back to him because the bankruptcy shows what distribution was made, and he was not among those to whom the money was distributed.

Mr. Stewart complains that we rely upon a pre-
63 sumption that the returns for the years 1920 to 1934 were not filed, and therefore Mr. DeLucia could have had no income over and above what he would have been required to file for.

We have a legal right to a presumption such as that. We have case law to support the fact that such a presumption exists. But in addition to that, we have very cogent evidence during the course of this trial that Mr. DeLucia's living conditions did not become extravagant until he began to feel the income from the extortion money.

So that I think whatever presumption is attributable to the period 1920 to 1934 is all on our side; that he may well have been a hoodlum, as Mr. Stewart painted him to the jury, even in those years 1920 to 1934, and

I believe he was. But he wasn't a big time hoodlum. He was a small time hoodlum, and what income he had, we never had the benefit of hearing from him what his income was, nor did Mr. Stewart see fit to put on any testimony to contradict the presumptions which we sought to attach to both his living conditions and his failure to file returns in the years 1920 to 1934.

64 I can't think of any other point that Mr. Stewart raised that I need to answer other than the general allegation, which I didn't hear him attack specifically, but I take it that throughout this argument there runs the thought that the verdict on the fourth count is inconsistent with the verdicts on the first three counts.

In the first place, your Honor, in so far as inconsistency is concerned, the United States Supreme Court in Dunn v. United States, 284 U.S. 390, says:

> "Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment. If separate indictments had been presented against the defendant for possession and for maintenance of a nuisance, and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded as res judicata of the other. Where the offenses are separately charged in the counts of a single indictment, the same rule must hold."

65 That has been held also in the Seventh Circuit, United States v. Bassell, 187 F. 2d, 878, where the court said, at page 881:

> "As to the argument that the verdict is inconsistent, it will be enough to say that where a defendant is charged by two or more counts in an indictment consistency between the verdicts on the several counts is not necessary."

It goes on further:

"A verdict of acquittal on one count does not invalidate a verdict of guilty on another count although the same evidence is offered in support of each."

I could go on citing cases indefinitely, including three or four more from the Seventh Circuit, but I don't think it is necessary.

By the Court: The jury heard your statement about the $300,000.00.

By Mr. Barnett: I was coming to that, your Honor.

By the Court: And they signed three verdicts that it wasn't there.

* * *

66-68 * * *

69 Does the defendant wish to offer anything by way of mitigation?

By Mr. Stewart: No, your Honor.

By the Court: Not a word?

By Mr. Stewart: No, sir.

By Mr. Barnett: Before proceeding to sentence, your Honor, I would like—

By the Court: Are you going to back up Mr. Scott Stewart?

By Mr. Barnett: I would like to make a statement, your Honor, and before proceeding to sentence I would like to also make a remark about the record.

By the Court: Proceed.

By Mr. Barnett: First of all, your Honor, I move the Court for an order directing that these documents which were called for under the Jencks case, and part of which were submitted to the defense and part of which were held back from them by the Court, be sealed in these envelopes and be transmitted to the Court of Appeals in the event there is a notice of appeal filed.

By the Court: It may be so done as part of the record.

By Mr. Stewart: At the same time, may we ask that all exhibits be transferred as they are?

70 By the Court: Everything that is before me must be preserved—

By Mr. Stewart: I think we need an order. I have drawn a stipulation. I anticipate Mr. Barnett will probably—

By the Court: (Continuing) And submitted to the Court of Appeals.

I meant to say one more word on the question of the withholding of some of the statements of Mr. Smith, Agent Smith, as you call him.

Not rehashing what I saw in the files, I am satisfied that under the new legislative act, the Court acted with full and complete propriety. I do not believe that a district court ought to declare an act unconstitutional without letting it go to the Court of Appeals. Nor do I think that that act was necessary under those documents, as far as I saw them.

All right. Proceed.

By Mr. Barnett: Your Honor, you mentioned this will be transmitted as part of the record, but we ask for an order that they be sealed and sent up.

By the Court: That is right. All right.

By Mr. Barnett: Furthermore, I would like the
71 record to show, your Honor—I didn't make this clear in my answer to Mr. Stewart—I would like the record to show that these documents prepared by Mr. Smith, which were withheld by the Court from the defense, are the only documents which the defense requested and which were withheld from them. Every other document they requested they received with respect to any witness that testified at the trial.

By the Court: He made no complaint on that.

By Mr. Barnett: He did refer to Mr. King, and I was

surprised by his reference to Mr. King, and that is why I make that statement.

In Mr. Stewart's brief, which he submitted to me for the first time this morning—

By the Court: I read it carefully.

By Mr. Barnett: He made reference to the Court having given what we call the Allen charge. That is in the very back of his brief, and he says, "With all due respect your Honor committed reversible error in instructing the jury after it had retired."

By the Court: That was initiated by Mr. Stewart originally. I had no intention of giving one until Mr. Stewart initiated his own form, and then I gave one after he pointed out the Supreme Court decision to me.

By Mr. Stewart: I believe the record has been
72 made as to what you did.

By the Court: The record speaks for itself, that is right.

By Mr. Barnett: That is what I am afraid of, your Honor.

By the Court: I don't mean to criticize anything that was done, but I knew nothing of that type of a decision until Mr. Stewart called it to my attention. Then when you came in with your citation I merely followed the law as I saw it in the United States Supreme Court decisions.

By Mr. Barnett: Because of the fact that some of the discussion took place out of the presence of the Court Reporter, your Honor, I would like to state my recollection of what happened on that occasion.

This was on the morning of May 29, 1958, when I came into the court room and I was called into your Honor's chambers. In your Honor's chambers Mr. Stewart was already present, and you handed me a document, which was Mr. Stewart's version of the Allen charge and said, "Have you seen this?" And I said I had not.

Mr. Stewart said that he was offering that to be
73 given to the jury. I said that I preferred by version of the Allen charge, and we then proceeded to hash over the two charges. Eventually you gave a charge, which was not completely my charge but which was also not completely Mr. Stewart's charge.

By the Court: That is correct. I gave my own, following the Allen case.

By Mr. Barnett: That is right. But I think the record should show clearly that there was absolutely no question as to the propriety of the Court giving that type of instruction at that time because both the defense and the Government requested it at that time.

Any question revolving around the instruction revolves around the actual language in the instruction itself to which Mr. Stewart objected. But apparently the jury had been out long enough so that the Court felt that such a charge was warranted and defense counsel apparently felt it was warranted.

* * *

74-82 * * *

83 * * * By Mr. Stewart: Every man is entitled to a fair trial. A man is not as bad as somebody paints him to be, and some of us that are supposed to be good are not so good either.

The Government didn't spare us anything in the way of prejudicial evidence. They proved, incidentally, as they were putting in the case, that Mr. DeLucia has been a good friendly man.

They went over every expenditure he made with a fine tooth comb and investigated him and his family and everybody he ever came in contact with, and not one line of evidence is in here about any money that was spent in riotous living or contributing to people in campaigns where it might be questionable.

There was nothing that was revealed about him except that he goes along and he makes his money from gambling and incidental things like that. If there is any fault there, your Honor, that fault is a part of our system. Possibly if gambling could be legalized, we wouldn't have people who have to live outside the law. When they do live
84 outside the law, they are not the only ones who do.

Gambling can't operate without somebody in the law winking at it and using that as a means of income which does not need to be accounted for.

It is a situation that society helps make itself, your Honor, and this man who happens to be before the bar shouldn't be punished for a condition that probably he doesn't have a great deal of control over.

He has never concealed or said anything different. Your Honor must remember that the very government that your Honor is representing here when you took that oath of office, that very government reaches in and wants part of that income. It doesn't become them very well when a man is up for sentence and it is a question of whether he gets this number of years or that number of years that your Honor should be reminded that the income comes from illegal sources.

* * *

85-91 * * *

Government's Exhibit 181

449

PAUL DeLUCIA
COMPUTATION OF POSSIBLE CASH ON HAND

Government Exhibit 181 — Date Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER J.
No.
Roy E. Fuller - Official Court Reporter

Year	Cash Income per Return	Adjustments Per RAR	Unreported Extortion Income	Additions to Income	Gross Funds Available	Proven Expenditures	Possible Cash on Hand December 31st
1934	$ 8,473.68	$ -	$ -	$ -	$ 8,473.68	$ 11,74	$ -
1935	13,260.00	-	44,757.06	-	58,017.06	16,55	41,466.45
1936	24,000.00	-	83,899.61	-	107,899.61	75,56	73,804.16
1937	42,916.63	-	85,046.71	-	127,963.34	35,24	166,523.32
1938	59,747.00	2,799.72	14,078.08	203.00	76,827.80	70,27	173,076.89
1939	74,058.17	5,209.97	-	33,832.24	113,100.38	105,28	180,891.32
1940	60,764.78	-	-	11,810.63	72,575.41	56,74	196,722.16
1941	72,186.80	-	-	9,147.78	81,334.58	46,82	231,236.16
1942	72,503.52	-	-	2,695.00	75,198.52	106,27	200,161.27
1943	80,375.00	-	-	-	80,375.00	124,89	155,637.53
1944	-	-	-	-	-	19,22	136,410.27
1945	1,000.00	-	-	-	1,000.00	20,00	117,409.98
1946	143.50	-	-	-	143.50	15,28	102,267.01
1947	387.50	-	-	-	387.50	53,95	48,697.01
Totals	$509,816.58	$ 8,009.69	$227,781.46	$ 57,688.65	$803,296.38	$757,87	$ 48,697.01

ANALYSIS OF ADDITIONS TO INCOME

	Total	1938	1939	1940	194
World Amusement Co.	$ 3,603.00	$ 203.00	$ 400.00	$ -	$ 3,00 00
Trans-America Stock	3,432.24	-	3,432.24	-	- 24
Steve Matalone Mtge.	30,000.00	-	30,000.00	-	- 00
Goodbody & Co.	17,958.41	-	-	11,810.63	6,14 41
Farm Receipts	2,695.00	-	-	-	- 00
Totals	$ 57,688.65	$ 203.00	$ 33,832.24	$ 11,810.63	$ 9,14 65

449

PAUL DeLUCIA
COMPUTATION OF POSSIBLE CASH ON HAND

Government Exhibit 181 — Defendants Exhibit — ( ) Identified (X) Received
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER J.
No.
Roy E. Fuller - Official Court Reporter

Year	Unreported Extortion Income	Additions to Income	Gross Funds Available	Proven Expenditures	Possible Cash on Hand December 31st
1934	$ -	$ -	$ 8,473.68	$ 11,749.78	$ -
1935	44,757.06	-	58,017.06	16,550.61	41,466.45
1936	83,899.61	-	107,899.61	75,561.90	73,804.16
1937	85,046.71	-	127,963.34	35,244.18	166,523.32
1938	14,078.08	203.00	76,827.80	70,274.23	173,076.89
1939	-	33,832.24	113,100.38	105,285.95	180,891.32
1940	-	11,810.63	72,575.41	56,744.57	196,722.16
1941	-	9,147.78	81,334.58	46,820.58	231,236.16
1942	-	2,695.00	75,198.52	106,273.41	200,161.27
1943	-	-	80,375.00	124,898.74	155,637.53
1944	-	-	-	19,227.26	136,410.27
1945	-	-	1,000.00	20,000.29	117,409.98
1946	-	-	143.50	15,286.47	102,267.01
1947	-	-	387.50	53,957.50	48,697.01
Totals	$227,781.46	$ 57,688.65	$803,296.38	$757,8 .47	$ 48,697.01

ANALYSIS OF ADDITIONS TO INCOME

	1938	1939	1940	1941	1942
World Amusement Co.	$ 203.00	$ 400.00	$ -	$ 3,000.00	$ -
Trans-America Stock	-	3,432.24	-	-	-
Steve Matalone Mtge.	-	30,000.00	-	-	-
Goodbody & Co.	-	-	11,810.63	6,147.78	-
Farm Receipts	-	-	-	-	2,695.00
Totals	$ 203.00	$ 33,832.24	$ 11,810.63	$ 9,147.78	$ 2,695.00

FILED
JUN 20 1958
AT 1942 O'CLOCK
ROY H. JOHNSON, CLERK

Government Exhibit 182 In the District Court of the United States, Northern District of Illinois, Eastern Division No. Roy L. Fuller - Official Court Reporter

PAUL DeLUCIA
SCHEDULE OF EXPENDITURES
JANUARY 1, 1934 - DECEMBER 31, 1947

	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	19
GOODBODY & CO.						3,973.21	16,202.78	45.47					
GREAT LAKES MORTGAGE CO.		987.50	929.02	1,001.72	859.35	828.75	876.95	767.55	737.83	3,548.68			
U. S. TREASURY BONDS (Coupon)				5,000.00						6,000.00			
NORTHWESTERN LIFE INS. CO.			848.20	1,177.40	771.60	789.60	808.20	806.80	805.30	804.00	802.60		
AUTOMOBILES							1,550.00						
R. J. BRAHAN-REAL ESTATE & INS.	6,978.70	2,930.00		142.50	130.00	1,500.00	1,642.50	130.00					
HARVEY FRIER-REAL ESTATE							400.00						
ITALO-AMERICAN INS. CO.	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08				
RIVER FOREST LOTS							2,000.00	2,450.00					
HANNAH SMITH-PERSONAL PROPERTY					1,500.00								
RIVER FOREST RESIDENCE					25,383.31								
RIVER FOREST TAX WARRANTS							340.55						
COOK COUNTY TAXES							843.36	875.86	1,196.71	1,553.76	1,148.42	1,243.42	1,34
LAFOSTE COUNTY TAXES							815.47	336.71	328.76	314.82	246.98	310.80	46
INSURANCE-HOME FIRE								26.00		140.00	396.80	304.00	6
MORRIS LEV, MD								135.00	1,065.00	60.00	10.00	5.00	7
U.S. SAVINGS BONDS, SERIES-E								2,250.00	4,575.00	75.00			
ALFRED J. CILELLA, ATTORNEY									528.25				
DANIEL LEVINTHAL, MD									2,500.00				
FARM-REPAIRS & IMPROVEMENTS									9,161.84				
FREY BROS.-BUILDING SUPPLIES		1,356.76	7,000.00	6,000.00						52.80	261.87	367.29	19
SIBILANO-FURNITURE						18,702.84				1,881.79			
LEGAL FEES										20,000.00			
S. D. GLOUDEN										1,637.50			
COST OF LIVING	3,500.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,80
FEDERAL INCOME TAXES		220.00	633.60	2,181.00	6,600.66	11,806.33	16,793.68	22,866.11	33,363.03	46,208.30	4,400.59	4,809.78	61
TRANS-AMERICA STOCK				8,550.48									
ILLINOIS RETAIL TAX									350.00	150.00			
U. S. GASOLINE & MISC. TAXES									91.77	100.00			
MICHAEL REESE HOSPITAL								100.00	416.25				
RIVER FOREST-REMODELLING						30,145.90							
IMPROVEMENTS-INDIANA [illegible] DeLUCIA					17,814.69	12,377.07							
IMPROVEMENTS-ILLINOIS per DeLUCIA					5,063.54	13,011.17							
FARM PURCHASE									35,122.59				
FARM-MORTGAGE PAYMENT										9,400.00			
EQUITABLE ANNUITY-PAUL DeLUCIA					2,000.00	2,000.00	2,000.00	2,000.00	2,000.00				
EQUITABLE ANNUITY-MARIE DeLUCIA			20,000.00										
EQUITABLE ANNUITY-ANTHONY DeLUCIA			20,000.00										
BAIL BOND PREMIUM										4,000.00			
EUGENE BERNSTEIN-LEGAL FEE												1,000.00	
A. GIACONI-RIVER FOREST								1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,56
A. CONTURSI-HOUSE FURNISHING													63
IMPROVEMENTS-INDIANA-per 1956 RETURN		1,585.27	16,260.00	1,300.00									
FINE-EXTORTION CASE										10,000.00			
WORLD AMUSEMENT CORP.	1,000.00												
LEGAL FEES-OTHERS													
U.S. PAROLE REPORTS-EXPENDITURES													
MATALONE MORTGAGE INTEREST							1,800.00	1,800.00	1,800.00	1,800.00			
ADDL. EXPENDITURES per ARMSTRONG										5,212.09			
JAMES AMORINO-INDIANA		1,400.00	1,820.00	1,820.00	2,080.00	2,080.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,60
TOTAL EXPENDITURES	$ 11,749.78	$ 16,550.61	$ 75,561.90	$ 35,244.18	$ 70,274.23	$105,285.95	$ 56,744.57	$ 46,820.58	$106,273.41	$124,898.74	$ 19,227.26	$ 20,000.29	$ 15,28

FILED
AT O'CLOCK
ROY H. JOHNSON, CLERK

RECAPITULATION

1934	$ 11,749.78
1935	16,550.61
1936	75,561.90
1937	35,244.18
1938	70,274.23
1939	105,285.95
1940	56,744.57
1941	46,820.58
1942	106,273.81
1943	124,898.74
1944	19,227.26
1945	20,000.29
1946	15,286.47
1947	53,957.50
TOTAL	$757,875.47

Government's Exhibit 182 451

Government Exhibit 182 In the District Court of the United States, Northern District of Illinois, Eastern Division No. Roy L. Fuller - Official Court Reporter

PAUL DeLUCIA
SCHEDULE OF EXPENDITURES
JANUARY 1, 1934 - DECEMBER 31, 1947

	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	Exhibit No.
															25
		987.50	929.02	1,001.72	859.35	3,973.21	16,202.78	45.47	737.83	3,548.68					26
				5,000.00						6,000.00					27
			848.20	1,177.40	771.60	789.60	808.20	806.80	805.30	804.00	802.60				64-5-6
							1,550.00							11,219.52	28
	6,978.70	2,930.00		142.50	130.00	1,500.00	1,642.50	130.00							165
							400.00								29
	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08						167
							2,000.00	2,450.00							30
					1,500.00										31
					25,383.31										81
							340.55								32
							843.36	875.86	1,196.71	1,553.76	1,148.42	1,243.42	1,342.56	1,511.68	33
							815.47	336.71	328.76	314.82	246.98	310.80	402.60	429.08	34
								26.00		140.00	396.80	304.00	64.00	733.38	168
								135.00	1,065.00	60.00	10.00	5.00	70.00	20.00	35
								2,250.00	4,575.00	75.00					36
									528.25						37
									2,500.00						39
									9,161.84						81
		1,356.76	7,000.00	6,000.00						52.80	261.87	367.29	197.31	334.00	122-164
						18,702.84				1,881.79					41
										20,000.00					169
										1,637.50					42
	3,500.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	5,200.00	170
		220.00	633.60	2,181.00	6,600.66	11,806.33	16,793.68	22,866.11	33,363.03	46,208.30	4,400.59	4,809.78	618.00	195.15	171
				8,550.48											43
									350.00	150.00					172
									91.77	100.00					173
								100.00	416.25						44
						30,145.90									113
					17,814.69	12,377.07									161-162
					5,063.54	13,011.17									161-162
									35,122.59						95-97
										9,400.00					86
					2,000.00	2,000.00	2,000.00	2,000.00	2,000.00						176
			20,000.00												176
			20,000.00												177
										4,000.00					45
												1,000.00			46
								1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	47
													632.00		163
		1,585.27	16,260.00	1,300.00											174
										10,000.00					49
	1,000.00														138
														1,820.00	51
														28,334.69	50
							1,800.00	1,800.00	1,800.00	1,800.00					166
										5,212.09					175
		1,400.00	1,820.00	1,820.00	2,080.00	2,080.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	
	$ 11,749.78	$ 16,550.61	$ 75,561.90	$ 35,244.18	$ 70,274.23	$105,285.95	$ 56,744.57	$ 46,820.58	$106,273.41	$124,898.74	$ 19,227.26	$ 20,000.29	$ 15,286.47	$ 53,957.50	

RECAPITULATION

1934	$ 11,749.78
1935	16,550.61
1936	75,561.90
1937	35,244.18
1938	70,274.23
1939	105,285.95
1940	56,744.57
1941	46,820.58
1942	106,273.41
1943	124,898.74
1944	19,227.26
1945	20,000.29
1946	15,286.47
1947	53,957.50
TOTAL	$757,875.47

PAUL DeLUCIA
SCHEDULE OF EXPENDITURES
JANUARY 1, 1934 - DECEMBER 31, 1947

	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	Exhibit No.
GOODBODY & CO.						$ 3,973.21	$ 16,202.78	$ 45.47							25
GREAT LAKES MORTGAGE CO.		987.50	929.02	1,001.72	859.35	828.75	876.95	767.55	737.83	3,548.68					26
U. S. TREASURY BONDS (Coupon)				5,000.00						6,000.00					27
NORTHWESTERN LIFE INS. CO.			848.20	1,177.40	771.60	789.60	808.20	806.80	805.30	804.00	802.60				64-5-6
AUTOMOBILES							1,550.00							11,219.52	28
E. I. BEAHAN-REAL ESTATE & INS.	6,978.70	2,930.00		142.50	130.00	1,500.00	1,642.50	130.00							165
HARVEY FRIER-REAL ESTATE							400.00								29
ITALO-AMERICAN INS. CO.	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08	271.08						167
RIVER FOREST LOTS							2,000.00	2,450.00							30
HANNAH SMITH-PERSONAL PROPERTY					1,500.00										31
RIVER FOREST RESIDENCE					25,383.31										81
RIVER FOREST TAX WARRANTS							340.55								32
COOK COUNTY TAXES							843.36	875.86	1,196.71	1,553.76	1,148.42	1,243.82	1,342.56	1,514.68	33
LaPORTE COUNTY TAXES							815.47	336.71	328.76	314.82	246.98	310.80	402.60	429.08	34
INSURANCE-HOME & CAR								26.00		140.00	396.80	304.00	64.00	733.38	168
MORRIS LEV, MD								135.00	1,065.00	60.00	10.00	5.00	70.00	20.00	35
U.S. SAVINGS BONDS, SERIES-E								2,250.00	4,575.00	75.00					36
ALFRED J. CILELLA, ATTORNEY									528.25						37
DANIEL LEVINTHAL, MD									2,500.00						39
FARM-REPAIRS & IMPROVEMENTS									9,161.84						38
FREY BROS.-BUILDING SUPPLIES		1,356.76	7,000.00	6,000.00						52.80	261.87	367.29	197.31	934.00	122-164
SIBILANO-FURNITURE						18,702.84				1,881.79					41
LEGAL FEES										20,000.00					169
E. D. GLIDDEN										1,637.50					42
COST OF LIVING	3,500.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	7,800.00	5,200.00	170
FEDERAL INCOME TAXES		220.00	633.60	2,181.00	6,600.66	11,806.33	16,793.68	22,866.11	33,363.03	46,208.30	4,400.59	4,809.78	618.00	195.15	171
TRANS-AMERICA STOCK				8,550.48											43
ILLINOIS RETAIL TAX									350.00	150.00					172
U. S. GASOLINE & MISC. TAXES									91.77	100.00					173
MICHAEL REESE HOSPITAL							100.00		416.25						44
RIVER FOREST-REMODELING						30,145.90									113
IMPROVEMENTS-INDIANA per DeLUCIA					17,814.69	12,377.07									161-162
IMPROVEMENTS-ILLINOIS per DeLUCIA					5,063.54	13,011.17									161-162
FARM PURCHASE									35,122.59						95-97
FARM-MORTGAGE PAYMENT										9,400.00					86
EQUITABLE ANNUITY-PAUL DeLUCIA					2,000.00	2,000.00	2,000.00	2,000.00	2,000.00						176
EQUITABLE ANNUITY-MARIE DeLUCIA			20,000.00												176
EQUITABLE ANNUITY-ANTHONY DeLUCIA			20,000.00												176
BAIL BOND PREMIUM										4,000.00					177
EUGENE BERNSTEIN-LEGAL FEE												1,000.00			45
A. GIACONI-RIVER FOREST							1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00	46
A. CONTURSI-HOUSE FURNISHING													632.00		47
IMPROVEMENTS-INDIANA-per 1956 RETURN		1,585.27	16,260.00	1,300.00											163
FINE-EXTORTION CASE										10,000.00					174
WORLD AMUSEMENT CORP.	1,000.00														49
LEGAL FEES-OTHERS														1,820.00	138
U.S. PAROLE REPORTS-EXPENDITURES														28,334.69	51
MATALONE MORTGAGE INTEREST							1,800.00	1,800.00	1,800.00	1,800.00					50
ADDL. EXPENDITURES per ARMSTRONG										5,212.09					166
JAMES AMORINO-[redacted]NA		1,400.00	1,820.00	1,820.00	2,080.00	2,080.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	175
TOTAL EXPENDITURES	$ 11,749.78	$ 16,550.61	$ 75,561.90	$ 35,244.18	$ 70,274.23	$105,285.95	$ 56,744.57	$ 46,820.58	$106,273.41	$124,898.74	$ 19,227.26	$ 20,000.29	$ 15,286.47	$ 53,957.50	

RECAPITULATION

1934	$ 11,749.78
1935	16,550.61
1936	75,561.90
1937	35,244.18
1938	70,274.23
1939	105,285.95
1940	56,744.57
1941	46,820.58
1942	106,273.41
1943	124,898.74
1944	19,227.26
1945	20,000.29
1946	15,286.47
1947	53,957.50
TOTAL	$757,875.47

FILED
1958
AT O'CLOCK
ROY H. JOHNSON, CLERK

Government's Exhibit 182 451

PAUL DeLUCIA
SCHEDULE OF EXPENDITURES
JANUARY 1, 1934 - DECEMBER 31, 1947

RECAPITULATION

1934	$ 11,749.78
1935	16,550.61
1936	75,561.90
1937	35,244.18
1938	70,274.23
1939	105,285.95
1940	56,744.57
1941	46,820.58
1942	106,273.41
1943	124,898.74
1944	19,227.26
1945	20,000.29
1946	15,286.47
1947	53,957.50
TOTAL	$757,875.47

FILED
1958
AT O'CLOCK
ROY H. JOHNSON, CLERK

Government Exhibit 184 — Defendant's Exhibit — ( ) Identified (X) Received

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.

No.

Roy E. Fuller - Official Court Reporter

PAUL DeLUCIA
INCOME TAX RETURN FILING REQUIREMENT
1920 - 1933

Year	Single	Married
1920	$1,000.00	$
1921	1,000.00	
1922	1,000.00	
1923	1,000.00	
1924	1,000.00	
1925	1,500.00	
1926	1,500.00	
1927		3,500.00
1928		3,500.00
1929		3,500.00
1930		3,500.00
1931		3,500.00
1932		2,500.00
1933		2,500.00
	$8,000.00	$22,500.00

FILED
JUN 20 1958
AT ..... O'CLOCK
ROY H. JOHNSON, CLERK

Total Possible Net Income without being required to file an Income Tax Return:

1920 - 1927	$ 8,000.00
1928 - 1933	22,500.00
	$30,500.00

Note:

Paul DeLucia was married in January 1927.

Government Exhibit 185 — Defendants Exhibit — ( ) Mem. (x) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division — Before Miner, J.
No.
Roy E. Fuller - Official Court Reporter

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, PAUL DE LUCIA

hereby make, constitute and appoint, with full power of substitution, EUGENE BERNSTEIN

my true and lawful attorney, hereby revoking any and all powers of attorney heretofore executed in the premises; for me and in my name, place and stead to sign, make, execute, file and prosecute before the Bureau of Internal Revenue, United States Treasury Department, all claims for refund, abatement or credit of any and all excessive taxes which have heretofore been or may hereafter be unlawfully or illegally assessed against or collected from me by the said Treasury Department for Income Tax

and to defend me against proposed additional taxes for calendar year 1948

to institute such proceedings at law or in equity as he deems necessary or proper for my relief; to do and perform any and all such other lawful acts as shall be deemed necessary or proper to protect my interests; to receive and receipt for vouchers issued to me covering such sums as may be refunded; to make, execute and deliver all necessary receipts, vouchers or releases upon the refunding, abatement or credit of any of such taxes; to request and receive from the Treasury Department such documents or copies thereof as I may be entitled under the law and the regulations to demand and receive, giving and granting unto said attorney full power and authority to do and perform all and every act or thing whatsoever requisite or necessary in and about the premises as fully and to all intents and purposes as I might or could do if personally present at the doing thereof; hereby ratifying and confirming all claims or other documents which said attorney may have filed or executed or may file or execute in this matter.

And I hereby request and direct that all correspondence, documents, warrants, or other data in connection with this matter be sent in care of EUGENE BERNSTEIN, 77 West Washington Street, Chicago 2, Illinois.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 18 day of June A. D. 1954.

Paul De Lucia (SEAL)

FILED 2 H 1958 O'CLOCK ROY H. JOHNSON, CLERK

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Be it known that on the 18 day of June, 1954 before the undersigned, a Notary Public in and for the State and County aforesaid, personally came and appeared one Paul De Lucia to me known as the person described in and who executed the above Power of Attorney, and who acknowledged the same to be his free act and deed for the purposes therein set forth.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal the day and year last above written.

Geneva Cox
NOTARY PUBLIC

(SEAL)

Government Exhibit — Defendants Exhibit — ( ) Idem. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.

No.

Roy E. Fuller - Official Court Reporter

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, PAUL DE LUCIA

FILED 1 30 1958 AT O'CLOCK ROY H. JOHNSON, CLERK

hereby make, constitute and appoint, with full power of substitution, EUGENE BERNSTEIN

my true and lawful attorney, hereby revoking any and all powers of attorney heretofore executed in the premises, for me and in my name, place and stead to sign, make, execute, file and prosecute before the Bureau of Internal Revenue, United States Treasury Department, all claims for refund, abatement or credit of any and all excessive taxes which have heretofore been or may hereafter be unlawfully or illegally assessed against or collected from me by the said Treasury Department for INCOME TAX

and to defend me against proposed additional taxes for calendar year 1949

to institute such proceedings at law or in equity as he deems necessary or proper for my relief; to do and perform any and all such other lawful acts as shall be deemed necessary or proper to protect my interests; to receive and receipt for vouchers issued to me covering such sums as may be refunded; to make, execute and deliver all necessary receipts, vouchers or releases upon the refunding, abatement or credit of any of such taxes; to request and receive from the Treasury Department such documents or copies thereof as I may be entitled under the law and the regulations to demand and receive, giving and granting unto said attorney full power and authority to do and perform all and every act or thing whatsoever requisite or necessary in and about the premises as fully and to all intents and purposes as I might or could do if personally present at the doing thereof; hereby ratifying and confirming all claims or other documents which said attorney may have filed or executed or may file or execute in this matter.

And I hereby request and direct that all correspondence, documents, warrants, or other data in connection with this matter be sent in care of EUGENE BERNSTEIN, 77 West Washington Street, Chicago 2, Illinois.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 18 day of June A. D. 1954.

Paul De Lucia (SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Be it known that on the 18 day of June, 1954 before the undersigned, a Notary Public in and for the State and County aforesaid, personally came and appeared one PAUL DE LUCIA to me known as the person described in and who executed the above Power of Attorney, and who acknowledged the same to be his free act and deed for the purposes therein set forth.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal the day and year last above written.

Jenena Cox
NOTARY PUBLIC

(SEAL)

Government Exhibit | Defendants Exhibit | ( ) Idem ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.

No.

Roy E. Fuller - Official Court Reporter

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, PAUL DE LUCIA

hereby make, constitute and appoint, with full power of substitution, EUGENE BERNSTEIN

my true and lawful attorney, hereby revoking any and all powers of attorney heretofore executed in the premises, for me and in my name, place and stead to sign, make, execute, file and prosecute before the Bureau of Internal Revenue, United States Treasury Department, all claims for refund, abatement or credit of any and all excessive taxes which have heretofore been or may hereafter be unlawfully or illegally assessed against or collected from me by the said Treasury Department for INCOME TAX

and to defend me against proposed additional taxes for calendar year 1950

to institute such proceedings at law or in equity as he deems necessary or proper for my relief; to do and perform any and all such other lawful acts as shall be deemed necessary or proper to protect my interests; to receive and receipt for vouchers issued to me covering such sums as may be refunded; to make, execute and deliver all necessary receipts, vouchers or releases upon the refunding, abatement or credit of any of such taxes; to request and receive from the Treasury Department such documents or copies thereof as I may be entitled under the law and the regulations to demand and receive, giving and granting unto said attorney full power and authority to do and perform all and every act or thing whatsoever requisite or necessary in and about the premises as fully and to all intents and purposes as I might or could do if personally present at the doing thereof; hereby ratifying and confirming all claims or other documents which said attorney may have filed or executed or may file or execute in this matter.

And I hereby request and direct that all correspondence, documents, warrants, or other data in connection with this matter be sent in care of EUGENE BERNSTEIN, 77 West Washington Street, Chicago 2, Illinois.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 18 day of June A. D. 1954.

FILED

Paul De Lucia (SEAL)

1958

AT O'CLOCK

ROY H. JOHNSON, CLERK

57 cv 154

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Be it known that on the 18 day of June, 1954 before the undersigned, a Notary Public in and for the State and County aforesaid, personally came and appeared one PAUL DE LUCIA to me known as the person described in and who executed the above Power of Attorney, and who acknowledged the same to be his free act and deed for the purposes therein set forth.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal the day and year last above written.

Geneva Cox

NOTARY PUBLIC

(SEAL)

FILED
DEC 20 1958
AT O'CLOCK
ROY H. JOHNSON, CLERK

Government Exhibit 223 | Defendants Exhibit | ( ) Iden. (X) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

Paul & Nancy DeLucia
Computation of Net Income
For the Period 1948 - 1950 Inclusive

	1948			1950		
Cash in Banks - December 31st :	$	$	$	$	$	$
Northern Trust Co.		234.49			4,905.72	
1st State Bank-Forest Park		9,416.43	9,650.92		-	6,077.35
Total Expenditures-Parole Reports		217,107.37		120,933.14		118,770.76
Less:						
Funds Available- :						
Cash on Hand 12/31/47	48,697.01					
1st State Bank-Forest Park Loan	11,000.00					
Gross Farm Receipts	30,633.81	90,330.82		70,646.79		42,548.35
Net Expenditures			126,776.55		50,286.35	76,222.41
Total Funds to be Accounted For:			136,427.47		55,192.07	82,299.76
Less:						
Cash in Banks - January 1st:						
Northern Trust Co.			-		234.49	4,905.72
1st State Bank-Forest Park			-		9,416.43	-
Excess of Expenditures over Funds Available			136,427.47		45,541.15	77,394.04
Less:						
Depreciation - Allowable			3,810.84		8,938.26	12,838.90
Corrected Income:			132,616.63		36,602.89	64,555.14
Less:						
Standard Deduction:			1,000.00			
Itemized Deductions:					2,600.00	2,640.00
Net Income			$131,616.63		$34,002.89	$61,915.14

Government Exhibit 224 Defendants Exhibit ( ) Iden. (X) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

PAUL & NANCY DeLUCIA

Year Ended - December 31, 1948

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income				$131,616.63
Less: Exemption (4) x $600.00				2,400.00
Income subject to tentative tax				$129,216.63
Income subject to tentative tax; one-half of such income if joint return				$ 64,608.31
Tentative tax				$ 37,914.48
Less:				
Tax Reduction:	$ 0 - 400	17%	$ 68.00	
	$400-100,000	12%	4,501.73	
Total Tax reduction				4,569.73
Combined Normal tax and surtax				$ 33,344.75
Multiply amount of combined tax by 2 if joint return				66,689.50
Income tax liability disclosed by return				-0-
Deficiency in income tax as claimed by Government				$ 66,689.50

FILED
20 1958
AT O'CLOCK
ROY H. JOHNSON, CLERK
154

Government Exhibit 225 Defendant's Exhibit ( ) Mkd. (X) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.

Roy E. Feller - Official Court Reporter

PAUL & NANCY DeLUCIA

Year Ended December 31, 1949

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income		$34,002.89
Less: Exemption (4) x $600.00		2,400.00
Income subject to tentative tax		31,602.89
Income subject to tentative tax; one-half of such income if joint return		15,801.44½
Tentative tax		5,106.68
Tax Reductions:		
$0- $400	17%	$ 68.00
$400-$100,000	12%	564.80
Total tax reduction		632.80
Combined normal tax and surtax		4,473.88
Multiply amount of combined tax by 2 if joint return		8,947.76
Income tax liability disclosed by return		-0-
Deficiency in income tax as claimed by Government - - -		8,947.76

FILED

JUN 12 0 1958

AT ____ O'CLOCK
ROY H. JOHNSON, CLERK

Government Exhibit 226 Defendants Exhibit ( ) Idea. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division DEFOGE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

PAUL AND NANCY DeLUCIA

Year ended December 31, 1950

COMPUTATION OF INCOME TAX FOR INDIVIDUALS NOT USING TAX TABLE

Net Income		$61,915.14
Less: Exemption (4 X $600.)		2,400.00
Income subject to tentative tax		$59,515.14
Income subject to tentative tax, one-half of such income if joint return		29,757.57
Tentative tax		13,069.69
Tax Reduction:		
$0 - $400.	13% $ 52.00	
$400 - $100,000.	9% 1,140.27	
Total tax reduction		1,192.27
Combined normal tax and surtax		$11,877.42
Multiply amount of combined tax by 2 if joint return		23,754.84
Income tax liability disclosed by return		-0-
Deficiency in income tax as claimed by Government -		$23,754.84

578154
FILED
JUN 20 1958
AT ____ O'CLOCK
ROY H. JOHNSON, CLERK

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 3 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 745

PAUL DE LUCIA,

v.

UNITED STATES OF AMERICA.

Petition

FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WM. SCOTT STEWART
Chicago Temple
Chicago 2, Illinois
Counsel for Petitioner

APPENDED
Opinion of United States Court of Appeals.

McCORMICK & HENDERSON, INC., CHICAGO, ILL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

PAUL DE LUCIA,

v.

UNITED STATES OF AMERICA.

Petition

FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Earl Warren, Chief Justice of the United States and Associate Justices of the Supreme Court of the United States.

May it please the Court:

The petition of Paul De Lucia respectfully shows to this Honorable Court:

I.

The Opinion of the Court Below.

The opinion of the Court of Appeals rendered December 31, 1958, has not yet been reported. It appears in this record and has been copied in the Appendix. (Herein p. 163)

II.

Jurisdiction.

The date of the judgment to be reviewed is December 31, 1958. Our Petition for Rehearing was denied February 4, 1959. Jurisdiction to issue the writ is found in the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C.A., Sec. 1254) Based on Title 28 U.S.C. 1940 ed. §§ 346 and 347 (Mar. 3, 1911, c. 231, §§ 239, 240, 36 Stat. 1157; Feb. 13, 1925, c. 229 § 1, 43 Stat. 938; Jan. 1, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926) (from Revisor's Note Title 28 U.S.C.A. Judiciary and Judicial Procedure § 1254 p. 42.)

III.

Questions Presented.

1.

Can a conviction be sustained in a net worth case where the Court of Appeals makes a general finding that a starting point and a likely source has been proved and the evidence shows no such proof?

2.

Where the prosecutor claims that proof of starting point and source is not necessary because of an alternative method and this claim is fortified by the instructions given at the request of the Government, may the Court of Appeals disregard the fact that there is no evidence to support any alternative method and affirm on the ground that that Honorable Court is of the opinion that the net worth method of proof has been sufficient?

3.

Where the evidence shows, without dispute, that petitioner expended more money during the year 1950 than he could have had available, if he were limited to reported income for that year, leaving the question open as to whether the excess expenditures came from current income or from funds previously accumulated, is the opinion of an expert, as to the amount of cash available at the end of 1948 founded on hearsay, sufficient to establish a starting point in a net worth case?

4.

Where it appears that in 1945 the Agents realized that the hearsay evidence in the hands of the Government might not be sufficient to support the civil claim made and as a result a compromise was made, can the Agent's Report, based on hearsay without other evidence, be used in a criminal trial held in 1958, in order to establish the amount of money received, where it has then become necessary in the criminal case to prove that only part of the money originally claimed to have been obtained was received?

5.

In a net worth case, is proof of a source of income said to have been unreported for 1950 necessary, after it is made to appear in evidence that petitioner has paid taxes on all of the income received by him during 1950 and that he had no source other than the sources appearing in his records and reflected in his returns?

6.

In a net worth case when it appears that the opinion of an expert as to a starting sum of available cash at the start is based upon hearsay, that the expert has assumed facts not in evidence and has arbitrarily rejected portions

of the cross-examination of witnesses for the Government, should not the Court have directed acquittal, it appearing that the opinion of this expert is the only evidence of a starting point?

7.

After the Government has relied upon hearsay evidence upon which to base the opinion of an expert that petitioner had received a certain sum of money in prior years, should the prosecutor be permitted to prove denials made by petitioner out of court as to the receipts of this extortion money, merely to make an unfounded claim that the denials were false?

8.

Where in a net worth case the jury has found guilt on three counts and the Court of Appeals reverses as to two counts, on the ground that evidence concerning the statements of others was used against petitioner, should not the affirmance on the third count be reversed, when it appears that the same error contributed to the conviction on the third count?

9.

In a net worth case where the prosecutor has adopted a theory based upon the use of statements made by others, fortified by instructions given at the request of the Government and the Court of Appeals has found that it was error to make use of the testimony used as a base of this theory, should not the conviction be reversed?

10.

In a net worth case where an instruction given at the request of the Government takes important questions of fact from the jury and the Court decides the questions of fact against petitioner as matters of law, should not the judgment be reversed?

11.

In a net worth case, may a prosecutor be permitted to shift the burden to the defendant by means of argument and instructions given at his request, in the absence of having proved essentials of the case for the Government?

12.

Where it appears from the evidence that the Court of Appeals has misconceived the issues and has held that a jury question was created, when no such question existed, should the conviction stand?

13.

The Court of Appeals having reversed as to two counts and the jury having acquitted as to a conspiracy count and it appearing that the Court of Appeals held that the District Court erred in the matter of the application of rules of evidence, should not the case be remanded for new trial on the remaining count, instead of affirmance without remand?

14.

In a net worth case where it appears that the evidence was insufficient, confusion was created by the manner of presentation, that errors were committed concerning rules of evidence and errors were made as to the giving and refusing of instructions, plus an improper closing argument by the prosecutor, should not a conviction be reversed?

15.

The District Judge inspected certain statements *in camera* and held that they could be of no value to the defense. These papers were sealed and transmitted to the

Court of Appeals where it was held that no error had been committed. On review here we present four questions as follows:

(1) If § 3500 had not been enacted would it have been error for the Court to refuse to require delivery of the papers on the ground stated, *i.e.*, that they could have been of no value to the defense?

(2) If the answer to (1) is yes, the question arises, was it error to refuse, after application of § 3500?

(3) If it would have been error under the *Jencks* case and not error under § 3500, has Congress the Constitutional power to change the practice in the light of that decision?

(4) In view of the fact that the Government was obliged to prove the materiality of certain statements and the Court took this question from the jury by instruction, after an inspection *in camera*, does not this amount to conviction on evidence not heard or seen by petitioner?

16.

Where the Government seeks to punish for evasion of income taxes and proves as a part of its case that a defendant had made money by illicit means, is it proper for the prosecutor and the Court to denounce the defendant because of the manner in which his income had been obtained and to put him on trial for law breaking in general?

17.

Were the verdicts inconsistent where the jury by acquittal found that there had been insufficient evidence to prove a vital element necessary in the remaining counts?

18.

The Court gave a supplemental instruction at the request of the Government after the jury had retired. Petitioner objected to the language used. The question submitted is—did this instruction prejudice petitioner, being argumentative in favor of the Government?

IV.

Statutes Involved.

Any person who wilfully attempted in any manner to evade or defeat any tax imposed, or the payment thereof, shall be guilty and punished in accordance with the requirements of the statute. Section 145 (b) Internal Revenue Code of 1939; 26 United States Code, Section 145 (b).

On September 2, 1957, Chapter 223 of Title 18 U.S.C. was amended by adding the following to § 3500.

(c) If the United States claims that any statement ordered to be produced under this Section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court *in camera*. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. • • •

V.

Summary Statement of Matter Involved.

Petitioner was found guilty by a jury on the first three counts of a four count indictment. The fourth count charged petitioner and Joseph Bulger, a lawyer, with conspiracy to make the false statements alleged in two of the previous counts. The jury acquitted both defendants on Count IV.

Counts I and II (2)* charged petitioner with violation of § 7201, in that petitioner made and caused to be made to the Revenue officials false statements concerning the existence of a $300,000 cash hoard, allegedly kept by petitioner in his home. The false statements were said to have been made for the purpose of concealing additional unreported income for 1948 and 1949. The statute of limitations had run on those years, so the charge was founded on these false statements made in 1954. The evidence showed without dispute that petitioner had made no statement, true

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* These numbers direct the attention of Your Honors to the Appendix, in three volumes, which Appendix contains references to pages of the record on file, thus (2). A transcript of all of the proceedings was made and filed by the Official Court Reporter, referred to as (Tr. 2). As the trial progressed, daily copy was furnished the Court, the prosecution and the defense. This transcript and all of the exhibits were certified to the Court of Appeals and have been sent here by that Honorable Court. The Court of Appeals had a complete record of all that took place below. That record was fully printed for use in the Court of Appeals and such printed record has been certified to this Honorable Court. Petitioner having claimed in the Court of Appeals that the evidence was insufficient and this being a circumstantial evidence case, all of the evidence relating to De Lucia was printed. The Government filed an appendix, page numbers are referred to this by (G. 2).

or false. The statement about the $300,000 was made in the testimony given by Mr. Bulger before Assistant Regional Counsel King, (455) and mentioned in conferences with lawyers. It was also alleged that a false statement was made before Special Agent Smith when petitioner appeared, accompanied by his lawyers. (406) The theory of the Government, approved by the District Judge expressed in the instructions and in refusing to allow a motion for acquittal, was that although petitioner had made no statement, the false statements made during the investigation by and in the presence of lawyers for petitioner constituted evidence against DeLucia. The Court of Appeals held that there was a failure of proof necessary to make petitioner responsible for that said by others. Consequently, that Honorable Court held that the District Court erred in denying petitioner's motion for judgment of acquittal on Counts I and II.

Judgment was affirmed as to Count III charging violation of § 145 (b) Internal Revenue Code of 1939, 26 U.S.C. § 145 (b) by filing a false return for 1950.

Much of the evidence was stipulated. Petitioner stood on his motion for acquittal. He introduced no evidence before the jury. On appeal, no question was raised as to the credibility of any witness. The reliability of expert opinion was questioned by counsel for petitioner. Petitioner was on parole during the indictment years. He had furnished monthly reports, based upon books kept by his tax lawyer for that purpose. The Government did not question the accuracy of the books or parole reports as to the matters there recorded. The only dispute arose over the fact that petitioner in his books and on his report credited himself with money designated as having been drawn from "funds on hand."

The Government claimed that the proof showed that in fact this money came from current income. There was no question but what expenditures exceeded income for the indictment years. If in fact petitioner was in possession of $300,000, when he came out of the penitentiary on parole, there had been enough money on hand at the end of 1947 to meet expenditures for 1948, 1949 and 1950.

The Government put in evidence about the $300,000, in order to attempt to prove that DeLucia had had no such amount. The Government proved that petitioner had testified, in 1950, before the Kefauver Committee that he had $300,000 when he came out of the penitentiary. The Government was unable to prove that DeLucia did not have $300,000 as stated. The prosecutor claimed that he had shown the falsity of this testimony by proof of the financial history of petitioner, plus the opinion of experts that at the beginning of 1948 DeLucia could not have had more cash available than $48,697.01. This was proved, if at all, by the net worth method. Petitioner questioned the reliability of the charts and the expert opinions on the ground that the Government evidence on its face showed that there had been no proof of a starting point. Agent Ruggaber (245) compiled his report (Exhibit 55, p. 245) in 1945 from a printed transcript of testimony given in a New York prosecution, where DeLucia had been one of the defendants. This report was compiled for the purpose of a 90 day letter sent to petitioner while he was in the penitentiary. The claim of the Government in the Tax Court was that large sums received by DeLucia as extortion money was unreported. DeLucia compromised this tax claim, which settlement was approved by the Tax Court. Agent Ruggaber had no knowledge as to how much, if any, money had been received by DeLucia. His Report

was based upon hearsay. The Agents as experts assumed that this Report had stated proven facts and compiled charts based upon this Report to show available cash on hand at the end of 1947 to be this sum of $48,697.01. When petitioner made a motion for acquittal, because of insufficient evidence, including his claim of no starting point and no unreported source, the prosecutor made claim that he had a firm starting point.

The Court of Appeals held that a starting point and a source had been proved. It is contended that this finding came as a result of a misconception of the evidence. The prosecutor confused the issue in the District Court by claiming that he had the right to prove an alternate method and was therefore not bound to prove starting point or source. The District Court, at the request of the Government, gave instructions based upon this theory. In order to maintain this alternate method, the prosecutor claimed that the evidence for the Government had blocked out all possibility of DeLucia having non-taxable funds on hand for expenditures in 1948, 1949 and 1950. This unfounded claim was contradicted by the evidence for the Government. The prosecutor claimed and the experts assumed, that Agent Ruggaber had proved that in 1938 to 1941, DeLucia had received large sums by extortion. The receipt of this money, of course, would constitute non-taxable funds for 1948, 1949 and 1950. Counsel for petitioners, for the sake of argument, assumed that DeLucia had received about $404,000, the amount shown by the Ruggaber Report. The other evidence in the case showed without dispute, that if DeLucia had so received about $404,000, he had more than enough to cover his expenditures. The Court of Appeals treated the case as one of net worth and said nothing of an alternative. It is contended that this claim of an alterna-

tive method of proof, also reflected in the instructions, improperly relieved the Government of proving a starting point and a likely source. The circumstances proved did not support the claim of any alternative method. This is a net worth case or nothing.

Another method adopted by the prosecutor to relieve him of proving a starting point and a source was to claim that DeLucia had outlined his defense to the Agents during the investigation. With this assumption, the prosecutor claimed that he only needed to prove the explanations made by DeLucia to be false and such proof warranted a conviction. This theory was also reflected in the instructions given at the request of the Government. DeLucia had made no statement or explanation, concerning the source of his expenditures, except that contained in his income tax returns, his parole reports and his books. The statements contained in his returns, his reports and his books did not support the assumption. The prosecutor did not claim that they did. Mr. Bernstein, his tax lawyer, had during the investigation assumed the truth of the Ruggaber Report for the purpose of demonstrating that upon such assumption, DeLucia had enough money from the extortion to cover his expenditures. Mr. Bulger gave testimony before an Agent that he had counted $300,000 kept in the attic. The prosecutor maintained that DeLucia was to be charged with that said by Messrs. Bernstein and Bulger. The District Court believed that the law supported the prosecutor. The Court of Appeals held that petitioner was not to be held responsible for that said by others during the investigation and consequently reversed as to Counts I and II. It is contended here by petitioner that the evidence, the argument of the prosecutor and the instructions show that the jury most likely was misled also as to Count III. The Court of Appeals said that it was

a jury question as to whether petitioner had $48,697.01 or if the defense position was correct, that petitioner had $300,000 at the end of 1947. This finding was based upon a misconception of the issues. Nothing was said by the Court of Appeals about the $48,697.01 figure having been based on hearsay. When the Court of Appeals stated the defense position, that Honorable Court demonstrated that it had been deceived, as had the District Court, by reason of the fact that the prosecutor picked the defense out of that said by others during the investigation. The defense in fact was based upon the plea of not guilty. The prosecutor erected a man of straw and proceeded to demolish it. Because of this maneuver, the Court of Appeals lost sight of the law which places the burden of proof on the Government and does not permit it to shift to the defense, in the absence of proof of a case. The Court of Appeals overlooked, or for some reason failed to apply, the rule that whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved and not presumed. The failure might be attributed to acceptance by that Honorable Court of the pretense of the prosecutor as to the nature of the defense. That Honorable Court should have perceived that the defense of DeLucia had been a demurrer to the evidence, under his plea of not guilty. We request Your Honors to decide the questions of law misapprehended below and arising on undisputed evidence.

After the prosecutor proved that petitioner had received a total of $404,000 from extortion during 1935 to 1941 and it was shown that this was hearsay, after an expert had testified to a chart based upon this hearsay (Exhibit 181, p. 341), the prosecutor proved that on six occasions, including testimony before Congressional Committees and the Grand Jury, petitioner had denied the receipt of ex-

tortion money. This evidence was put in, not to prove that petitioner had not received the money but in order that the prosecutor could say in argument as to petitioner (G. 348) that "the soul of the Biblical character resided in his carcass and that truth was a stranger". The Court of Appeals missed the point entirely by holding that the Government had always maintained that petitioner had received the money. That Honorable Court said nothing of the error of permitting the Government to prove denials merely to show what the prosecutor, without foundation, termed as falsehoods. There had been nothing to impeach, the previous denials may have been the truth for all the evidence shows. The Court of Appeals held that petitioner at times, by innuendo, admitted the receipt of extortion money. When this is traced back into the record it will be seen that it was based on that said by others. This method of proof, as to what petitioner said, was held to be error by the Court of Appeals. But such holding was lost sight of in the finding by that Honorable Court of an innuendo. The Court of Appeals missed the point entirely, due to a misconception of the evidence.

Upon all of the evidence, we request Your Honors to determine ultimate facts to be reached by process of legal reasoning from, or the legal interpretation of the legal significance of the evidentiary facts. It will be learned that considerable confusion was created below by the prosecutor. Also that it is no small job to bring the case back into focus. Most of the questions presented here could not be understood from any summary statement. In our argument we point to details in order to show that the prosecutor had no case and obtained this conviction by reason of the confusion and prejudice created.

The Court refused to deliver to the defense a report made by a Government witness, stating that it could be of no value. The report was sealed and delivered to the Court of Appeals. That Honorable Court held that the District Court did not err and that petitioner's contention that 18 U.S.C.A. § 3500 is unconstitutional is without merit.

By an instruction given at the request of the Government, the Court took from the jury the question of the materiality of the alleged false statements. The District Court held that the acquittal cured the error, if any. The Court of Appeals held that petitioner's complaint related solely to Counts I and II. Petitioner here seeks to reverse that finding contending that the error may have misled the jury on the law as to Count III.

It was also contended in the Courts below that the guilty verdicts were inconsistent with the not guilty. The Court of Appeals held that there was no inconsistency, particularly as to Count III.

It is contended that the confusion resulted in erroneous instructions given at the request of the Government and the refusal of proper instructions tendered by petitioner. All of these contentions can be better asserted in argument where will be found references to the printed record.

The Court gave a supplemental instruction after the jury had retired. (637) The Court of Appeals held that no error exists. We contend that it was argumentative in favor of the Government.

We hope to demonstrate that the error found by the Court of Appeals to have been committed as to Counts I and II should have required reversal of the conviction on Count III. Also that even if there be a possibility for conviction on Count III, petitioner should have been awarded a new trial, in order that the case might be again tried free of the confusion created.

VI.

Argument.

Obviously, a verdict should not be permitted to stand without support from the evidence. The District Judge in such case, should direct an acquittal. In the cases where the District Judge is, for any reason, unable to see this duty, the Court of Appeals should reverse. One important question submitted involves the exercise of discretion by Your Honors. Your Honors may, under the law, take this case for review or refuse to take it. Your Honors have recognized the duty of supervision over the lower courts. *Mesarrosh* v. *United States,* 352 U.S. 1, 14; *McNabb* v. *United States,* 318 U.S. 217, 225. Just when the duty requires review in a particular case is of course a matter for Your Honors. In the case at bar, Your Honors are called upon to decide if the standards laid down by this Honorable Court in *Holland* v. *United States,* 348 U.S. 121, might be disregarded. Or if the standards have not been understood, should they be explained further? Another question presents itself. Should statutes, whose purpose is to procure payment of tax and to prevent frauds on the revenue, be used to effectuate the purpose of their enactment, or may they be used to harass and punish persons believed to have been guilty of general bad conduct. Particularly in a case where the Government is unable to prove violation of the tax laws, or to gain a conviction without distortion, confusion and appeal to prejudice. In the case at bar, the investigation was carried on for years, yet none of the usual steps were taken to collect any tax claimed to have been due for the indictment years. No 90 day letter was mailed. On previous occasions, the Agents had readjusted income and each time more tax was demanded, payment or settlement was made.

We realize that in the mine run criminal prosecutions, Your Honors generally leave questions of fact to the lower courts, particularly where conflicts and credibility are involved. In the case at bar, we do not request the weighing of evidence, unless the examination of the record, to see if there be any evidence on vital points, may be termed "weighing the evidence." We do not submit matters of conflicts or credibility.

There is a story somewhere of an Inn Keeper who cut the traveler down to fit the bed or stretched him out, if he was too short for the bed. Your Honors will find, we believe, that the prosecutor stretched his case to cause it to appear like *Holland* v. *United States*, 348 U.S. 121 on the facts. The reason for this distorting of the facts is that Your Honors had in the *Holland* case held that the circumstances proved were sufficient to support the guilty verdict. Holland, previous to trial, had given an explanation to the Revenue Agents concerning his defense, when confronted with the fact that his expenditures exceeded his assets and reported income. He claimed that the expenditures came from a certain cash hoard and explained where he had obtained the cash. The Government was able to prove this explanation to be false by circumstantial evidence. Holland admitted to the agents that he had taken money from the cash register for living expenses. The tapes had been destroyed. The restaurant business was proven to be a source of unreported income. Your Honors will find many differences between the *Holland* case and the case at bar, including

(a) DeLucia made no statement during the investigation to the Revenue Agents to explain his expenditures. The only explanations made were contained in returns, books and parole reports, not shown to have been inaccurate.

(b) DeLucia made no claim to the Revenue Agents that his expenditures came from a cash hoard.*

(c) The only source of income likely to have been received by DeLucia was shown on his books and in his parole reports, The prosecution was unable to show any other likely source during 1948, 1949 and and 1950. No source at all is shown for possible unreported income.

Knowing that DeLucia had made no explanation during the investigation, the prosecutor succeeded in casting the burden of proof on petitioner by maintaining that explanations by others during the investigation were the same as an explanation by DeLucia. The prosecutor claimed that, as he had proved this defense made by others to be false, the Government was entitled to a verdict, without proof required in a net worth case. The prosecutor confused the District Court with this claim and prevailed upon the trial Court to adopt such theory of law. This resulted in error as to the instructions. The Court of Appeals perceived that the prosecutor had produced no evidence to show that DeLucia could be charged with that said by others, but that Honorable Court failed to perceive that the error affected the entire case. When the Agents indicated that a criminal case was in prospect, Mr. Bernstein, DeLucia's tax attorney, called upon the Agents and endeavored to convince them that a criminal charge could not be sustained. Mr. Bernstein made explanations to the Revenue Service. The tax lawyer assumed, for the purpose of argument with the officials, that petitioner had received large sums of money by extortion. Mr. Bernstein

* The Government proved that he told the Kefauver Committee that he had $300,000 when he came out of the penitentiary. He never told them, or any one else, the source of that money.

was familiar with the foundation for the claim made in 1945 for additional taxes as shown by a 90 day letter, as Mr. Bernstein had represented the tax payers in the matter of the settlement of that claim. Mr. Bernstein also reminded the Agents that DeLucia had testified before the Kefauver Committee that when petitioner came out of the penitentiary he had $300,000. Mr. Bernstein, during the investigation, presented summaries to show that if De Lucia had in fact received the amount of extortion money as claimed in the 90 day letter, some $404,000 and had expended the amount shown by the parole reports there could be no proof of deficiency for 1948, 1949 and 1950. Also that if DeLucia had $300,000 when he came out of the penitentiary in 1947 that sum added to his reported income would be enough to cover for expenditures in 1948, 1949 and 1950.

The District Judge permitted the prosecutor to use the evidence of the statements so made by Mr. Bernstein, during the investigation, as if they had been made by DeLucia. But the prosecutor first changed the amount of $404,000 originally determined by Agent Ruggaber on hearsay to be the share of extortion money paid to DeLucia to about $227,000. Then the prosecutor added to the statement by pretending that DeLucia had asserted that the $300,000 had been part of the proceeds of extortion. This pretense deceived the District Judge to the extent that His Honor believed it to have been based upon facts proved. The courts below have been unable to see that the prosecutor twisted that which had been said by Mr. Bernstein. The prosecutor also treated the evidence of that testified to by Mr. Bulger in the investigation about the $300,000 as if DeLucia had said it. The District Judge was unable to see that it was error to permit the prosecutor to connect DeLucia with that said by others. The erroneous view of the District Judge caused the Court to

give prejudicial instructions at the request of the Government and to refuse proper ones tendered. The Court of Appeals saw the error of permitting the prosecutor to charge DeLucia with that said by others and reversed the judgment as to Counts I and II. That Honorable Court was unable to see that the same error brought about the conviction as to Count III. The prosecutor claimed that the Government was able to prove that DeLucia had not obtained sufficient extortion money to enable him to have left $300,000 when he came out. The figures used were not only based upon hearsay but they were arbitrarily juggled. DeLucia is shown to have denied the receipt of any extortion money and he never said that the $300,000 came from extortion. It is easy to understand that a jury will in some cases convict on general principles, but another question is presented when judges neglect to apply fundamental principles and consequently approve of verdicts so obtained. In order to understand our case, one must know the record. One must not charge DeLucia with that said by others, in the absence of proof that such evidence was admissible as against petitioner. One must know DeLucia merely stood on his plea of not guilty and that his defense was not that pretended by the prosecutor. Nearly three years before DeLucia was indicted and while the case was being considered by the Agents, we took the position, as shown by the transcript of our meeting with the Agents on September 1, 1954 (406), that the Government would be unable to prove its case. For about three years more the search for evidence was continued. When the statute of limitations was about to run on 1950, this indictment was returned. It now has been demonstrated that the Government did not have sufficient evidence upon which to sustain a verdict. We stipulated most of the evidence. The prosecutor preferred to put on witnesses familiar with records of certain undisputed expenditures. Petitioner offered to stipulate more, but the further offer was declined.

We feared confusion. The Courts below were unable to perceive that when the experts assumed a figure of $48,697.01 as "possible cash on hand, December 31, 1947," there was no evidence in the case to support the assumption made. The experts pretended to have such evidence. In order for Your Honors to perceive the worthlessness of the opinions of the experts, it will be necessary for us to explain the circumstances upon which they based a starting point. No doubt the jury was impressed by the official appearing nature of the reports of the Agents and charts made from them. The prosecutor referred to the reports as documents. It is too much to expect of a jury to enforce the rule against the use of hearsay. When a trial Judge refuses protection and the Court of Appeals fails to fully appreciate the point, a lawyer is put on guard and prompted to over explain, rather than risk a short statement which might do for a different sort of case. We realize that when we charge the prosecutor with misconduct, we must demonstrate the truth of our charges from the record. In a circumstantial evidence case this requires close attention to details.

Our last hope is that Your Honors will perceive that the Government erected its house on sand. That Your Honors will decide to take this case. Your Honors said in *Holland v. United States*, 348 U.S. 121, that

> "Appellate courts should review the cases, bearing constantly in mind that the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation."

The case at bar presents further difficulties, brought about by proof of a felony conviction, parole, alleged extortion and gambling income, to mention only a few incidents of the trial likely to arouse prejudice. The prosecutor added fuel to the flames by cluttering the record with immaterial

evidence and putting petitioner on trial for charges, made in argument, having no support in the evidence or in the indictment. In order to review this case, where the Government claims that the circumstantial evidence is sufficient and petitioner asserts a total failure of proof on vital elements, it will be necessary to understand just what was actually proved, as distinguished from that claimed by the prosecutor to have been proved. We quote from *Raymond Pearson Motor Co.* v. *Commissioner of Internal Revenue,* 246 F. 2d 509, 513:

> "Whether the issue be a question of law or of ultimate fact reached by processes of legal reasoning from, or the interpretation of the legal significance of, the evidentiary facts, which are here undisputed, that issue can be considered and decided on appeal free from the restraint of the so called 'clearly erroneous' doctrine." (citing cases.)

Although it may be too much to expect of a jury we have a right to expect a court of review to be able to decide questions of law properly as applied to our particular case. Also to determine ultimate facts, distinguish hearsay and interpret the legal significance of facts, without confusion created by the nature of the case and the manner in which it was presented and argued by the prosecutor. Your Honors said in *C.M.&St. P. Ry.* v. *Coogan,* 271 U.S. 472, 477:

> "Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved and not themselves presumed. *United States* v. *Ross,* 92 U.S. 281; *Manning* v. *Insurance Co.,* 100 U.S. 693, 698 * * * (478). The record leaves the matter in the realm of speculation and conjecture. That is not enough."

In the case at bar the Court of Appeals was able to perceive that the conviction as to Counts I and II rested on speculation and conjecture, but that Honorable Court was

unable to see that the very foundation of Count III was also laid upon guess work. In order to demonstrate the basis for our contentions, here it becomes necessary to make a somewhat detailed statement of the case, with a little argument thrown in as we proceed.

If this case be properly stated and fully understood, very little argument will be necessary.

This is a criminal prosecution, an income tax case, commenced by an indictment (2) filed March 4, 1957.

The Government filed a printed Appellee's Appendix based in part on portions of the record not printed by petitioner. References to this Government Appendix has been made as follows (G. 12). As we find matter that has been printed in both Appendices, we refer only to that furnished by petitioner, thus (12).

Petitioner and one of his lawyers, Joseph Bulger, were charged with conspiracy in Count IV. The jury acquitted. Both defendants were discharged as to Count IV. (642) Count IV was the only count charging Mr. Bulger, so he is out of the case as a defendant. The jury rendered separate verdicts of guilty upon each of the first three counts (642). Sentences were to run consecutively, three years and a fine as to each count.

The Court of Appeals reversed as to two counts, so there remains but one conviction on Count III. Count III charges violation of 145 (b) as to 1950. The returns for 1948, 1949 and 1950, together with attached schedules, were introduced by stipulation and are printed in this record (90 to 106).

The Court of Appeals said, (herein p. 169):

> "DeLucia's main thrust is delivered at the Government's evidence sustaining the net worth method of proof."

It is here contended that that Honorable Court erroneously found, as to Count III, the evidence to be sufficient, with a starting point, with a likely source of unreported income. It was contended by petitioner in both lower courts that the only starting point evidence was based upon unwarranted assumptions, hearsay and conjecture. The only source of income had by petitioner during the indictment years was from his farm and small investments. This income was carefully reported. The accounts were supervised and approved by Parole Officials. In the District Court the necessity of proving a starting point and source was thrown into confusion by reason of the fact that the prosecutor maintained that the Government under the law was not required to prove these elements, claiming an alternative method. The prosecutor in fact had no foundation for any alternative. Instructions were erroneously given at the request of the Government based upon this unfounded theory.

When the indictment is considered, it will be observed that the charges fall into three classifications, *i.e.*,

(1) Count I and II, the making of false statements;

(2) Count III, net worth;

(3) Count IV, conspiracy to make false statements.

In the evidence, argument and instructions, these charges were interwoven. The Government asked for conviction on all four counts. The defense requested acquittal on all. The District Court refused to require an election and de-

nied motions made for severence. The denial of these motions is here mentioned merely as a part of the history of the proceedings. Counts I and II involved taxes for 1948 and 1949. The statute of limitations had run. The Government sought to avoid the statute of limitations by alleging false statements in 1954, within the six years. The proof failed as to 1948 and 1949. The District Court refused to grant our motion for acquittal, based upon our contention that there had been a total failure to prove a necessary element. The Court of Appeals perceived that petitioner had made none of the false statements charged. That Honorable Court found that statements alleged to have been false were not connected up with DeLucia. We quote from the opinion of the Court of Appeals, (herein p. 167):

> "We, therefore, hold that there was a total failure to prove a necessary element of the offense charged in both Count I and II; that the evidence is clearly insufficient to support the verdict of guilty as to those two counts and the District Court erred in denying DeLucia's motion for judgment of acquittal on counts I and II * * * The portion of the judgment based upon Counts I and II is reversed and cause remanded with instructions grant the Defendant for judgment of acquittal thereon."

Obviously, petitioner has no objection to this finding as to Counts I and II. The Government did not petition for rehearing. Counts I and II include an allegation of false statements. There is nothing alleged about false statements in Count III. Consequently, the Court of Appeals overlooked the fact that the prosecutor dragged false statements into Count III, by claiming that petitioner's defense to all of the counts was based upon false statements. De Lucia made no statement, true or false, but the prosecutor

charged him with statements made by others. In his argument to the jury the prosecutor spoke of things said during the investigation by Mr. Bernstein and Mr. Bulger as if they had been said by DeLucia. The instructions given at the request of the Government supported the position taken by the prosecutor in this regard. The Court refused instructions designed to help keep the jury from making use of such evidence as against DeLucia. The Court of Appeals perceived that the use of such evidence against petitioner required reversal as to Counts I and II, but failed to see that the same error assisted the prosecution as to Count III.

The portion of the judgment based upon Count III was affirmed. (herein p. 173) In our petition for rehearing we asserted that even if that Honorable Court adhered to its finding as to Count III, the case should be remanded for a new trial on that Count, unencumbered by the mass of evidence introduced under the other three counts, having no legitimate bearing on guilt or innocence as to Count III. A like request is made of Your Honors.

Although Count I, II and IV are now out of the case, it will be necessary for us to describe them and consider much of the evidence introduced under them, in order that some of the questions submitted here be understood. The prosecutor presented the case for the Government as one package, with but one key to it all. (547) The various counts of the indictment may be summarized as follows:

COUNT I.

Petitioner is said to owe income taxes for 1948. In order to conceal this debt, DeLucia is said to have made and caused to have made, false statements about the existence of a $300,000 cash hoard. The time and place of the

making of the false statements are set out in the indictment (2 to 7) limited by the Amended Bill of Particulars. (25)

COUNT II.

Petitioner is said to owe income taxes for 1949. The charge is identical with Count I, except for the tax year named, including specification of the same alleged false statements.

COUNT III.

Petitioner is charged with the filing of a false return for the year 1950, in violation of § 145 (b) Internal Revenue Code of 1939.

COUNT IV.

Count IV charges a continuous conspiracy to make false statements concerning a matter within the jurisdiction of the Revenue Service, in violation of Title 18, § 1001 U.S.C. The overt acts alleged in Count IV, as limited by the Amended Bill of Particulars (25), are alleged to be the same false statements said in Counts I and II, to have been made, or caused to have been made, by petitioner and Mr. Bulger.

It was urged on the motion for new trial that the acquittal on Count IV established the failure to prove elements which the Government was required to prove in order to establish guilt as to Counts I, II, and III. The District Court ruled that there had been no inconsistency between the not guilty on Count IV and the guilty verdicts on Counts I, II and III. The Court of Appeals also said there had been no inconsistency and added, (herein p. 172):

> "As we are now concerned only with Count III what has been said is completely dispositive of any vestige of inconsistency."

In an effort to establish a starting point, the prosecutor went back to 1920 when petitioner entered this country (27). The Court of Appeals said (herein p. 169):

> "The Government undertook to prove what assets defendant had on hand at the beginning of 1948 by means of showing his entire preceding financial history."

It is our contention that the prosecutor failed in this undertaking for lack of evidence. In order to make this point, misconceived by the lower courts, it will be necessary for us to discuss in detail some of the circumstances in evidence. DeLucia at no time made a financial statement, so if "his entire preceding financial history" was proven at all it was by circumstantial evidence, upon which experts built tables and charts.

The evidence shows a conference between lawyers and Revenue Agents held September 1, 1954. In discussing the fact that DeLucia had told the Kefauver Committee that he had $300,000 when he came out of the penitentiary in 1947 there appears the following (425):

> Mr. Bernstein: You have the case that was just decided out in Los Angeles,—where the court said it was impossible to say that the Taxpayer didn't have a certain sum,—when the proof showed that he did have it.
>
> Mr. Smith: The proof isn't that he had it. He came in, in 1939, to this Department and testified that he had on hand, at the end of 1939, some measly amount of cash. I don't know what the exact figure was. Take that particular amount of cash and add to that his receipts from that point forward, and that amount of cash was after this alleged extortion—
>
> Mr. Bernstein: (Interposing) you say he came into this Department and testified to that?
>
> And you say you have a copy of this testimony here? Is that true?

Mr. Smith: He testified before—he was examined by Revenue Agents and he presented books and records during that examination showing his receipts and disbursements and his cash on hand at the beginning of the period and the cash on hand at the end of it. * * * (429) We have gone pretty far in disclosing to you the nature of the charges. The man comes in on a certain date with books and records that indicate he had a certain amount of money on hand. From that point forward, computation, taking into consideration and crediting all loans, all sources of income, with the exception of this alleged $300,000 that he testified to, would indicate that he was short. * * * (430) The books and records I have reference to are the books and records Mr. DeLucia presented back in the 30's, the late 30's, when he was examined by a Revenue Agent, which indicated that at the end of a certain year, he had a certain amount of cash on hand, and from that point forward, it is a mathematical calculation. Taking into consideration his testimony of this $300,000, and I say, bearing in mind the additional assessment which may or may not have been considered in his figure of cash on hand at a certain date, that the man is short in the years '48 and '49 and 1950. It is strictly mathematics, Gene. There is no mystery. I am not trying to attempt to put any mystery in this case. It is strictly a case of mathematics."

The books and records referred to by Agent Smith in the above conference were described in the case at bar by Agent Klein. Agent Smith was shown to have been mistaken as to the contents of the Report made by Agent Klein. We call attention to that said by Agent Smith to show the theory of the Government. When the evidence was produced in the case at bar it appeared that the prosecutor intended to use Agent Klein to establish a starting point but the evidence failed in this respect. Agent Klein testified (168)

to a three hour interview with DeLucia in 1940. The books and records were described. We quote (170):

Mr. Barnett: Q. Did you ask any questions in this conversation with Mr. DeLucia about the entries in the books?

Agent Klein: A. Why yes, I originally asked him how he computed his income, and he explained it with the entries in that book. I asked him if those were all the moneys withdrawn during the year, and he said, "Yes."

Q. He had withdrawn from what?

A. Withdrawn from, oh, the vault or his cash reserve, and he explained his method of bookkeeping was to put the money that he received into the vault, and whenever he took anything out he put a slip of paper in, what he took out, or a bill that he paid, and then those items would be entered into this book.

Q. They would be entered into the book as what?

A. As disbursements or expenditures.

Agent Klein described the method of bookkeeping and how he checked with the returns for 1938 and 1939. An adjustment was made of some small changes. Agent Klein's Report was put in evidence (Exhibit 62, p. 175) including schedules upon which appear "Cash in Vault," "Cash in Pocket" and "Cash in Bank." After Agent Klein was cross examined (185) and had left the stand he was recalled (242):

Mr. Stewart: Q. Referring to the conversation you had with Mr. DeLucia, which you testified to yesterday, and that took about three hours in your office, during that time did you ask Mr. DeLucia if the cash you were talking about as being on hand at any particular period, opening and closing was all the cash that Mr. DeLucia possessed or had?

Agent Klein: I did not.

Q. You weren't concerned in that?

A. No, it didn't affect me.

Q. Your memory of the books, as you remember them now, did they reflect or say that that was the total cash that Mr. DeLucia possessed?

A. Well, the books just reflected the cash in three categories.

Q. And they didn't say it was all the cash, did they?

A. No, there was no notation. Just the categories and the amounts."

At this point Your Honors might examine the Report and schedules. (175) Nowhere will be found any indication by Agent Klein that DeLucia had said the cash was all of his cash. Nor did Agent Klein in his Report indicate that the books showed that that was all of his cash. Nothing is said in Exhibit 62, (175) or in the testimony of Agent Klein one way or another about other assets. So the testimony and Report of Agent Klein was shown to have no value as a starting point. However, as we expect to show, Agent Mahon (323) testifying as an expert construed the testimony and the Report of Agent Klein to suit himself. The expert put something in it that is not there, *i.e.*, that it shows all of the cash possessed by DeLucia. Later the prosecutor shifted the burden of proof to petitioner, and claimed that a starting point was not necessary. As we have said, all efforts to establish a starting point were placed in confusion by the claim that the Government, under the law, had an alternative. At the same time, the prosecutor argued that the Government had proved a firm starting point. This "firm starting point" was based upon a table prepared by Agent Mahon (Exhibit 181, p. 341) showing "Possible Cash on Hand December 31, 1947" as $48,697.01. So it becomes necessary for us to examine the testimony of this expert to see how he arrived at that figure. The Courts below failed to appreciate that the opinion of Agent Mahon, as illustrated by Exhibit 181, (341) had no value. The Court of Appeals said that the

contention of the Government that $48,697.01 was a starting point, created a question of fact for the jury. That Honorable Court overlooked the fact that there was no evidence to support the opinion of the expert as to the $48,697.01.

Another report used as foundation for expert testimony, including tables and charts, was made by Agent Ruggaber. (Exhibit 55, p. 245) This was based on hearsay and has no value. The Report must be described in order to understand the manner in which Exhibit 181 (341) was composed. Government's Exhibit 181. (341) is a chart prepared by Agent Mahon to show computation of possible cash on hand, 1934 to 1947 inclusive. Agent Ruggaber (114) prepared his report from the printed transcript of a case in New York where DeLucia had been convicted.*

The New York prosecution was based upon the charge that the defendants conspired to extort about $1,800,000 from the executives in the moving picture industry. The charge being conspiracy, it was not necessary for the Government to prove the receipt of money by the defendants. The jury in the case was so instructed.**

After the New York conviction, after the appeal and petition for certiorari were lost, while petitioner was in the penitentiary in 1944, the Revenue Agent examined the printed transcript of the evidence given for the Govern-

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* Your Honors take judicial notice of the record, printed copy on file in this Honorable Court, **United States v. Campagna, et. al.** (including DeLucia) 146 F. 2d 524, Certiorari Denied, 324 U.S. 867.

** In the case at bar, the Government did not express any claim that the judgment of conviction in the conspiracy case established the receipt of money by DeLucia.

ment in the New York case. (130) The Agents concluded therefrom that the defendants had divided among themselves about $1,800,000 obtained by extortion, over a period of years. (127) This was hearsay. There was no testimony given by petitioner in the New York case, (130); no admissions said to have been made by DeLucia were proved, either in the New York case (136) or in the case at bar. Even considering the hearsay, no one said he gave DeLucia a cent. (131, 132) Cross-examination of Agent Ruggaber (263) made clear that this report had no value as evidence. In view of the fact that expert testimony was based upon that assumed by Agent Mahon to have been proven by the Ruggaber Report, it becomes necessary for us to describe the manner in which the Report was made up.

We quote from the Ruggaber Report (247):

> "The testimony in the earlier trial of George E. Browne and Willie Bioff, together with the testimony of the second trial in which this taxpayer was also convicted, was briefed, and the income taxable to the several persons was established from the information and evidence disclosed at those two trials. The case of George E. Browne was completed in October of 1944 and the exhibits used in this case and the *Browne* case are identical.
>
> "There were two principal sources of income via the conduit of Browne and Bioff and they were, first payments made by the producers and the exhibitors of moving pictures to Browne and Bioff as labor leaders to keep them from demanding the restoration of payouts previously taken by the moving picture operators in the various movie houses throughout the country, which Browne as International President controlled. Second, the 2% assessment fund raised from the salaries of the self same operators, which was to be used for union organization purposes but actually

was expended by the union officials and the hoodlums that they represented, this taxpayer being one of the so called Nitto mob whose members were indicted and convicted of extortion."

Petitioner was unable to prevail upon the Courts below to regard this Report as hearsay.

We were unable to cause the District Court to hold that an opinion based upon the assumption that the Report had proved facts was of no value as evidence.

If the Judges of the Court of Appeals did observe that this was hearsay, we find nothing in the opinion to that effect. If that Honorable Court deemed this as hearsay, the Judges must have misconceived our point and failed to have seen that such finding should have ended the case. The prosecutor confused the issue by claiming that the Government did not need a starting point or a likely source of income, under the alternative method of proof. Agent Mahon in composing Exhibit 181 (341) assumed that at the end of 1934, DeLucia had no cash available for expenditures. For some of the following years this expert included in his chart, under the heading "Gross funds available", various amounts, after assuming the figures to be found in the Ruggaber Report to have been based upon fact. Another expert, Saldana (525) compiled a chart (Exhibit 223, p. 528) for years 1948-1949 and 1950, subsequent to the chart prepared by Agent Mahon. This last chart assumed the correctness of the figures computed by Agent Mahon on his chart. (Exhibit 181, p. 341)

If Your Honors decide to examine into the question as to whether there be any evidence at all to support the verdict, it becomes necessary to observe the manner in which Agent Ruggaber arrived at his figures. The method adopted by him in 1945 was intended and used as a base for a 90

day letter. The Report should not be acceptable as a base for a criminal charge. Agent Ruggaber based his report on hearsay. Then he made an adjustment in favor of the taxpayer, insofar as a civil suit would be concerned. This adjustment was worked to the detriment of DeLucia in the case at bar. So it becomes necessary to point out the arbitrary manner in which this adjustment was made.

In explanation of his report, Agent Ruggaber testified that the accomplice witnesses Bioff and Browne told the court and jury in the New York case that they (Bioff and Browne) had collected large sums of money. That, after retaining a share, they had turned the balance over to persons (said by Bioff and Browne) to be associated with petitioner. (133) These third persons acted as conduits, to adopt the phrase used. We quote from the cross examination of Agent Ruggaber (262):

> Mr. Stewart: Q. I notice in reading through the schedules that there is reference to a man named Nick Circella. Can you explain what his participation in this was?
>
> Agent Ruggaber: A. Nick Cirella in this particular venture appeared to be the messenger boy. He would pick up the six-ninths which was distributed between Nitto, Mr. DeLucia and Campagna from Isadore Zevins, at times, in the distribution of the two percent fund, or in the funds that were picked up from the producers and exhibitors by either Bioff or Browne.

Nick Circella did not testify anywhere, nor did he make any statement.

Consequently, Agent Ruggaber gained this information about distribution, second hand, possibly from one also relying on hearsay. Agent Ruggaber testified that he had never talked to the petitioner about this case. (272)

Agent Ruggaber was able to find in the printed record of the New York trial corroboration of Bioff and Browne as to the fact that Bioff and Browne had received the the money from the union and from the moving picture executives. (132) The corporation and union records demonstrated that money had been drawn. Bioff and Browne admitted having received the money. But as to where the money went from there, after it left the hands of Bioff and Browne and how it was to be divided, Agent Ruggaber had only this hearsay evidence. Although, as he admitted on cross-examination, he had no first hand evidence of the transactions and none at all as to the actual share received by petitioner, he testified that he had assumed that petitioner had received a portion of this extortion money. On the witness stand in the New York case, Bioff and Browne told what the agreement had been, as to the share to be retained by them. They testified that they had deducted their share and had sent the balance from time to time by hand of a messenger, to the group of defendants.

Without the slightest knowledge of the fact Agent Ruggaber assumed that the share so sent via a conduit, had been divided equally. This calculation gave to each of De Lucia, Campagna and Nitto 2/9ths of the total sum so sent. All of this was obviously hearsay. Bioff and Browne did not claim to have been present when, if at all, the money was divided. All they knew, or anybody knew, was that the money was delivered by them to a go-between later to be divided. This Report was used in 1945 by the Agents as foundation for a 90 day letter mailed to De Lucia, while petitioner was in prison. The 90 day letter was based, as is also shown by the Report, upon an allotment to DeLucia of 2/9ths or about one million eight hundred thousand dollars, the total sum said to have been ex-

torted. In the Report the total share of petitioner was said to have been about $404,000. Agent Ruggaber testified (141) that he had formed an opinion from what he had read that the share of DeLucia was about $404,000. (141) In the case at bar, it was undisputed that for the indictment years, DeLucia spent more money than he would have available, if he had no more than the income upon which he paid taxes, during those years.

Even if the hearsay be accepted as evidence, the record, including the testimony of Agent Ruggaber (245) shows that in the present trial, if the Government had used the Report to establish the petitioner had received as his share of the extortion the sum of about $404,000, the case would have collapsed right there. The possession of $404,000 in addition to the income reported by DeLucia for the years covered by the Report would have been more than sufficient to cover all of the expenditures shown to have been made by petitioner in subsequent years. The experts in the case at bar assumed as a fact that DeLucia had obtained about $227,000. Agent Ruggaber explained the manner in which he had calculated the $227,000 figure.

For the purpose of making a claim on petitioner for taxes, while petitioner was in the penitentiary, Agent Ruggaber combed over the evidence given in the New York trial and ascertained the various amounts paid by the moving picture people.

We quote from the Ruggaber Report (246):

> "At no time during the examination was this taxpayer contacted for the reason that prior to his conviction in December 1943 in the Federal District Court in New York City, for extortion, this department did not desire to interfere with the investigation by other Federal departments. While under indictment it was

not advisable to contact the taxpayer while he was available in Chicago for the reason that he could legitimately refuse to answer questions pertaining to his income for fear of incrimination. Consequently no action was taken until after the trial and conviction and until the trial testimony was available."

From the records of the movie companies, Agent Ruggaber was able to ascertain the amount and approximate date of each payment made by the executives to Bioff and Browne. From this data, Agent Ruggaber was able to not only total the amounts obtained by Bioff and Browne but the Agent was able to divide that total and ascertain the amount obtained by Bioff and Browne in each of the years from 1935 to 1943 inclusive. Agent Ruggaber assumed that these yearly amounts were passed on by Bioff and Browne during the year obtained to an agent of the group and eventually divided evenly among members of the group.

Concerning the share assumed to have been obtained by DeLucia, the Report (Exhibit A to F) shows the following:

Year	Total Amount	Extortion Income
1935	$ 206,406.79	$ 44,704.04
1936	377,548.00	83,899.53
1937	500,010.00	124,446.61
1938	332,225.00	73,827.75
1939	189,233.59	42,051.91
1940	161,599.52	35,910.98
Total	$1,760,022.90	$404,840.82

Before Agent Ruggaber had touched the returns made by DeLucia for the years covered by his Report, the returns showed the following:

Year	Net Income per return	Other and miscellaneous income per return
1935	$ 13,260.00	$ 44,757.06
1936	24,000.00	83,899.61
1937	42,916.63	39,400.00
1938	59,747.00	56,950.00
1939	70,609.31	73,058.17
1940	60,764.78	60,139.70
1941	72,186.80	70,738.98
1942	71,026.60	72,503.52
1943	79,700.00	80,375.00

Then, as Agent Ruggaber explained, he examined the income tax returns made by DeLucia for the years in question. Agent Ruggaber found a notation in the file that DeLucia had been examined in 1936 by an office Auditor and that petitioner had explained to the Auditor that the income disclosed as "Miscellaneous" resulted from winnings on a prize fight. (248) Agent Ruggaber also took into consideration the Report of Agent Klein, (166) who in 1940 had examined the returns from 1938 and 1939. (248) In his examination of the returns for 1935 to 1941 inclusive, Agent Ruggaber found numerous items as shown above, or reported income on which DeLucia had paid tax designated on the return by petitioner as "Miscellaneous." Agent Ruggaber assumed the following as facts:

(a) The total share received by DeLucia was about $404,000.

(b) In view of the fact that the returns filed by De Lucia did not identify certain income other than "Miscellaneous," this income so reported must have been derived from the extortion. That De Lucia had no other "Miscellaneous" income.

In other words, the Agent assumed that after DeLucia received extortion money for a given year, at the end of the year petitioner had put part or all of it, into his income tax return and had in that manner paid taxes on some of the extortion money. On cross-examination Agent Ruggaber admitted that none of this income designated on the returns was identified as to source. We quote (142):

> Mr. Stewart: Q. As you picked up his returns in those previous years and you found he said "Miscellaneous, $75,000." for instance, you could not tell from the return what that income was, could you?
> Mr. Ruggaber: I could not."

By assuming as a fact that DeLucia paid taxes on extortion money under the designation "Miscellaneous", Agent Ruggaber calculated the difference between the extortion income for each year and the reported "Miscellaneous."

In the years where more "Miscellaneous" was reported than extortion funds received, Agent Ruggaber did not claim any additional tax. In years where the extortion money exceeded the "Miscellaneous," Agent Ruggaber subtracted the "Miscellaneous" from the extortion income for that year and claimed taxes on the difference, as unreported extortion income. (143) We quote again from the Ruggaber Report (248):

> "The taxpayer has reported 'Miscellaneous Income' for the years beginning with 1937 and in computing

the income from the moving picture companies, credit was given for such miscellaneous income previously, reported."

It will be seen from the Ruggaber Report that after this adjustment, the unreported extortion income, assumed to have been received by DeLucia, was calculated as follows:

Year	Adjustment per 90 day letter
1935	$ 44,757.06
1936	83,899.61
1937	85,046.71
1938	14,078.08
	$227,781.46

This adjusted Report was used by Agents Mahon (323) and Saldana (525) as if it contained a statement of fact as to the figure $227,781.46. If these experts had used $1,800,000 or $404,000 instead, they could just as well have thrown away their charts. These Agents assumed that the cash available to DeLucia from the extortion money was the above $227,781.46 shown by the Ruggaber Report, after Agent Ruggaber had made these adjustments. As is shown, according to the Ruggaber Report, the total share assumed to have been received by DeLucia, from the extortion money, was about $404,000. In the case at bar, as we have said, if DeLucia had been credited with having $404,000 to spend, in addition to the "Miscellaneous" income upon which he paid taxes, the tables and charts prepared by the Agents would have been inaccurate as to funds available at the beginning of each indictment year. The expenditures shown in 1948, 1949 and 1950, in excess of income for those years, then could have come from cash available at that time. Not from current income.

In such event the Government had no case on its own theory of net worth proof. We trust that Your Honors will permit us to make this argument without making the conclusion that we are admitting the receipt of extortion money. The record shows that Mr. Bernstein, during the investigation assumed for the purpose of argument that DeLucia had received about $404,000 in this manner. The prosecutor jumped on that and treated that said by Mr. Burnstein as if DeLucia had admitted the receipt of the extortion money. Later we expect to explain the manner in which the prosecutor built his case on this sort of a jump.

DeLucia, in his monthly reports to his Parole Agent informed those officials that money expended by him came in part from funds on hand. The record shows that petitioner has always denied the receipt of any extortion money. On cross-examination, Agent Ruggaber readily admitted that he had no first hand information concerning the amount of money actually received by the group, or the amount received by petitioner. The Agent admitted that he obtained his information from the printed transcript of the evidence introduced in the New York trial. In addition he had read some statements. We expect to explain, with references to the record, the manner in which the experts and the prosecutor made use of the Ruggaber Report. We quote from the cross-examination of Agent Ruggaber (130), referring to the printed transcript of the evidence in the New York trial where Bioff and Browne had testified:

> Mr. Stewart: So far as your transcript is concerned, insofar as these statements are concerned, Paul DeLucia could have gotten one hundred per cent of the money, so far as you are concerned, is that right?
>
> Agent Ruggaber: He could have.

Mr. Stewart: Q. Or, he could have gotten none of it?

Agent Ruggaber: A. I wouldn't know.

Mr. Stewart: Q. You wouldn't know?

Agent Ruggaber: A. No. • • •

Mr. Stewart: (142) Q. But as far as you know, when that fact becomes of some importance in a different type of case, like a criminal case, as far as you know as a fact, you don't know whether that $400,000 was the "Miscellaneous" income, or not, do you?

Agent Ruggaber: A. All I—

Q. You can't tell from the returns, can you?

A. None of it was identified as to source.

Q. And it was unidentified as far as you were concerned?

A. That is right.

Q. So when he was paying in previous years and he called it "miscellaneous," he was paying on a sum of money you had no notion about where it came from, isn't that right? • • • As you picked up his returns in those previous years and you found he said "Miscellaneous, $75,000," for instance, you could not tell from the return what that income was, could you?

A. I could not. • • •

Mr. Stewart: Q. (143) But as far as you know, and I believe you have already answered this, he could have gotten the $400,000 and not paid anything on that as far as you knew, isn't that right?

A. As far as I know he could have, yes."

Agent Mahon sat in court and heard this cross-examination. The prosecutor had available the Official Reporters' daily transcript. Both of them, the expert and the prosecutor, took care of this bit of cross-examination by just denying that it took place.

In the cross-examination of Agent Mahon who testified as an expert and introduced his chart (Exhibit 181, p. 341) showing possible cash on hand at the end of 1947 as $48,697.01, there appears the following (362):

Mr. Stewart: Well, now, as you are giving testimony here, as I understood Mr. Barnett's questions and as I believe you probably understood them, you were basing your answers on the evidence that has been introduced in this case, isn't that right?

A. That is right, sir. * * *

Q. And all the time you have been making the answers, we can qualify each answer that you have made, that it was based upon evidence which the Court and the jury heard in this case, as well as your hearing it, is that right?

A. That is right, sir. * * *

Mr. Stewart: (371) Q. Were you here when I asked Mr. Ruggaber and he said you couldn't follow the money, after you found it was in the hands of Mr. Bioff and he said he turned it over to those other fellows, you couldn't follow how that was divided up, how much Paul actually got, could you? As far as you know, Paul got the $1,800,000. Were you here when I asked the question, and Mr. Ruggaber told me yes?

Agent Mahon: A. I remember some general line of questioning like that, sir. I wouldn't say I remember the exact question, though.

Q. All right. But if it is a fact that Paul DeLucia got $1,800,000—

Mr. Barnett: Your Honor, that isn't the fact.

Mr. Stewart: Q. (Continuing)—then we are wasting our time here, aren't we?

Agent Mahon: A. That is conjecture.

Mr. Barnett: There was no such testimony whatsoever, your Honor.

Mr. Stewart: I will leave it to the jury whether there was any such testimony.

Mr. Barnett: There wasn't.

Mr. Stewart: Q. It is true, isn't it that judging the testimony, someone who had heard it, like the jury, if they come to the conclusion that Mr. DeLucia got $1,800,000 at that time, why, we are wasting our time with a lot of these figures, aren't we?

Agent Mahon? A. There was no such testimony to that effect, Mr. Stewart.

Q. That is your statement.

A. That is my statement, right. (372).

The above will illustrate the manner in which the prosecutor refused to accept that said by his own witnesses and how the expert made up his charts in disregard of the evidence. The record discloses even more of this sort of conduct.

The 90 day letter based on the Ruggaber Report was mailed to DeLucia while petitioner was in the penitentiary in 1945. At this point, Mr. Eugene Bernstein entered the matter for the first time. After visiting DeLucia in the penitentiary and talking with the Agents, Mr. Bernstein filed the necessary papers to contest the claim in the Tax Court: The following is shown in the Ruggaber Report (246):

Summary

Income Tax

Year	Deficiency	50% Penalty
1935	$10,571.80	$ 5,285.90
1936	34,614.75	17,307.37
1937	42,678.61	21,339.30
1938	6,124.43	3,608.16
1939	none	none
1940	48.40	none
1941	53.00	none

Income Tax

Net deficiency	$ 94,090.99
50% penalty	47,540.73
Total	141,631.72

These tax figures were computed after Agent Ruggaber made the adjustment and decreased the amount on which DeLucia was to pay taxes, to about $227,000 instead of about $404,000.

To illustrate, please look again at the above summary where we find

Summary

Year	Income Tax Deficiency	50% Penalty
1939	none	none

Now if we examine the Ruggaber Report further, we find that the total sum received by the group for 1939 was $189,233.59. After division, 2/9ths to each, to Campagna, Nitto and DeLucia, the Agent assumed that each of the three obtained $42,051.91, by extortion in 1939. Campagna and Nitto were charged on this as additional income. De Lucia was not charged, because for 1939 petitioner had paid taxes on $73,058.17, designated in his income tax return for 1939 as "Miscellaneous". Agent Ruggaber regarded this $73,058.17 as having been made up in part as proceeds of the extortion. We quote from the testimony of Agent Ruggaber (125):

> "Mr. Barnett: Q. Mr. Ruggaber, I hand Schedule A. Will you read us what is shown there?
>
> Agent Ruggaber: A. World Playhouse Amusement Corporation, $1,000. Miscellaneous, $73,058.17, for a total of $74,058.17.
>
> Q. With respect to your examination, what was the total amount of extortion funds which you found available to the group for the calendar year 1939?
>
> A. $189,233.59.
>
> Q. Did you consider that Paul DeLucia had received two-ninths thereof?
>
> A. I did.
>
> Q. What was that figure?
>
> A. $42,051.93.

Q. How did you treat that in your report?
A. I did not make a change for the year 1939.
Q. For what reason?
A. For the reason that miscellaneous income reported exceeded the amount of distributive share shown by my schedules.

Revenue Agent Klein testified to having examined DeLucia, his books and his returns for 1938 and 1939. We quote (171):

Mr. Barnett: Q. Did you have any further conversation with him about the entries in the books?
Agent Klein: A. Well, I did ask him his source of income.
Q. What did he say to that?
A. And if he could show where it came from, and he said his source of income was various things, that he gambled.
Q. Was what?
A. He was gambling.
Q. Anything else?
A. Oh, I think he explained his gambling, he said he gambled on the horses, the races, and sports, and things like that?

A tax claim based on the Ruggaber Report similar to the one made against DeLucia in 1945, had been lodged against Campagna, a co-defendant in the New York case, who also was in the penitentiary. The Agents did not reduce the share alloted to Campagna. The Agents assumed that Campagna had put his entire share in his pocket. That Campagna had reported none of it. There were no items on the returns rendered by Campagna such as "Miscellaneous". Campagna identified the source of income on which he paid taxes. None of it was identified as coming from extortion or the matter involved in the New York case with Bioff and Browne.

In his Report and in the 90 day letter there appears the following assumption as to Campagna (Exhibit C-5)

Year	Louis Campagna 2/9ths interest
1935	$ 44,757.04
1936	83,899.53
1937	124,446.61
1938	73,827.75
1939	42,051.91
1940	35,910.98
Total	$404,893.82

These claims were compromised, for less than the amounts designated in the 90 day letters to DeLucia and Campagna, while the prisoners were still in the penitentiary. During the negotiations and at the time of the settlement DeLucia and Campagna had pending an application for parole. The settlement was negotiated between Mr. Bernstein and Attorney Marsh, (144) acting for the Government. Mr. Marsh testified (153) that he refused to settle one case without the other. Further that he required that the money had to be paid "cash on the barrel head" into his office, before he would consent to consummate the deal. We quote (154):

Mr. Barnett: Q. And was the settlement that you and Mr. Bernstein agreed upon, based upon, in so far as income,—was it $227,000?

Attorney Marsh: A. It was approximately one-half or around one hundred and fourteen thousand, which was the additional income that we agreed to settle the case on.

Q. I see. Now, are the terms of that settlement incorporated in Government Exhibit 61, the stipulation?

A. The effect of it is. The adjustments aren't shown. The stipulation shows only tax liability but this is the effect of it, yes.

Q. It doesn't show income on it?

A. It shows no income. It shows only tax assessed and paid and amount due.

Q. Now this agreement with Mr. Bernstein was reached in March of 1946, was it?

A. It was? It was conditioned, however—I made it clear to Mr. Bernstein that any agreement that we reached was based on payment of the money; that if there was no payment, there was no agreement—it had to be paid.

Mr. Marsh testified (156) that when petitioner, through Mr. Bernstein, agreed to pay his total liability that that left no basis for liability on the part of Mrs. DeLucia. So therefore property in the name of Mrs. DeLucia was released from liens as a part of this settlement (155).

We quote from the cross-examination (159):

Mr. Stewart: Q. You have already enumerated to Mr. Barnett some of the things that you considered in determining whether this was a case for settlement or not, isn't that right?

Mr. Marsh: A. Yes sir.

Q. There are times and there have been times in your experience when the agency has sent out a deficiency notice with a certain amount in it, and you felt you could collect the full amount and you wouldn't take anything less, that is true, isn't it.

A. If it was justified, yes.

Q. Then there are other cases where you would take various things into consideration, and you think it is a good case for settlement, isn't that right?

A. That is right.

Q. And after you looked into this case and talked with Mr. Bernstein and looked over your files, you came to the honest conclusion as a lawyer and as an experienced man in that service that this was a good case for settlement, isn't that right?

A. I did.

Q. The first offer that was made to you by Mr. Bernstein was one that you rejected?

A. Yes, sir.

Q. When he finally got up to the offer that was finally accepted by you, you felt that that under all the circumstances was a reasonable offer which the Government could very well take?

A. I did, and I so recommended.

Q. You were satisfied with it?

A. I was satisfied that that was as good as we could justify on the basis of the evidence. * * *

Q. Your position was that he got that money and he owed the tax on it, isn't that right?

A. I was satisfied he got some. I tried to get the facts as to what the extent of his participation in it was.

Q. If you had been in possession of proof which would satisfy you as a lawyer that he got $400,000 you would have stuck to that position, wouldn't you?

A. I certainly would have.

Q. Then when you looked over and found certain weaknesses in your case, you decided that the offer of fifty per cent was a pretty good deal for the Government, isn't that right?

A. Provided it was paid, yes,—tied in with Campagna.

Q. All right. We heard your conditions, and we would like to have that explained a little more fully to the jury. You put the condition on because you weren't going to settle for some judgment that you probably would have trouble collecting, isn't that right?

A. That is right."

An agreement was made to settle for 50% provided no penalties were asserted. (153) Petitioner's share of the money with which to compromise was figured to be about $114,000.

Your Honors will please keep in mind that if in fact petitioner obtained about $400,000 there was no case on the theory of net worth. There surely must be something wrong with a conviction where it appears that the only reason the Government didn't compel payment on $400,000 was lack of evidence to sustain a civil claim. After it had been settled, the Government then is able to use the hearsay Report, with no evidence as a fact of $227,000 received and no more, in a criminal prosecution where the proof must be stronger not weaker. The Government waived the 50% penalty in order to obtain the "cash on the barrel head" and then reopened the matter in order to exact a criminal penalty.

As we proceed with our argument we expect to set out instructions refused by the Court. We realize that if we claimed here that it constituted reversible error for the Court to refuse the following two instructions (Nos. 147 and 148) Your Honors would immediately note that they are a bit argumentative and the Court did not err. But we have another object. We expect to show that the instructions given at the request of the Government were misleading. Ours may have helped the jury to understand the law applicable. We seek to demonstrate a culminating effect of numerous errors.

The Court Refused the following instructions tendered by petitioner (No. 147, p. 605) (No. 148, p. 606)

> 147 In arriving at the compromise and settlement agreement of the tax and penalty liabilities for the years involved the parties made concessions in order to arrive at a final agreement. There is a rule of law that neither party to a compromise agreement or consent judgment will be permitted to repudiate it. This policy requires that the Government, as well as De Lucia, be held to its agreement. The Government officials can not take a position which is to their ad-

vantage in one year and then change their position in a later year when they find it to their advantage to do so. The policy of the law has always been to promote and sustain settlements. The compromise and settlement ought not to be overthrown, even if the party complaining of it surrendered rights that the law, if appealed to, would have sustained.

148 The purpose of the statute authorizing settlements is to enable the taxpayer and the Government finally and completely to settle all controversies in respect of the tax liability for any previous taxable period and to protect the taxpayer against the reopening of the matter at a later date.

Later, after petitioner secured parole, the Government collected from DeLucia about $30,000 as a gift tax, on the claim that the $114,000 had been a gift made to petitioner. The Government called Agent O'Hanlon (501) to explain, over objection, this transaction and introduce a transcript of an interview with DeLucia in 1950. DeLucia told Agent O'Hanlon, as is shown by the transcript that he expected to pay the $114,000 some day. He did not consider it a gift. (504) DeLucia told the various bodies that he could not very well inquire among former associates as to who paid the money for fear of parole violation. The gift tax payment came after the indictment years.

In order to comply with parole regulations, Mr. Bernstein opened and kept a set of books, which books are in evidence. (441) Exhibits A-1 and A-2. The Agents had examined these books before the trial. Mr. Bernstein also prepared the monthly parole reports. The reports were approved as rendered. DeLucia was discharged from parole on March 7, 1954. As a part of a preliminary motion, Mr. Bernstein identified the books and introduced a number of charts and tables compiled by him as an expert (52 to 57). The charts prepared by Mr. Bernstein were not put

in evidence before the jury. The defense submitted them to the Court prior to trial, in an effort to require the Government to make some showing concerning the books, before resorting to the net worth method. These charts with the recapitulation were examined by the Agents during the trial. With the exception of a few minor differences, the Agents testified that they did not dispute Mr. Bernstein's figures.

We quote from the testimony of Agent Ruggaber (139):

Mr. Stewart: Q. I will show you what has been marked Defendants' Exhibit C, which has a heading on it, "Re Paul DeLucia, Summary of Income, Adjustments Thereto and Commissioner's Adjustments to Others."

I ask you whether or not you have seen that before?

Agent Ruggaber: A. Yes, sir, I saw that over the weekend.

Q. Are you prepared now, Mr. Ruggaber,—you see, I am not an expert in your line of work and you are, and as I listened to your testimony, it was along the line that this summary purports to summarize, isn't that true?

A. That is correct.

Q. Is there any difference in your report, your summarization, that you find between what you have concluded and what Mr. Bernstein has concluded in the report for you?

A. Yes, sir, a slight difference. . . .

Q. Will you point out the differences you find, if any?

A. For the year 1938 there is an item in here that says "Adjustment per Commissioner's ninety-day letter, redistribution of additional income." It is shown for the year 1938 as $16,877.80.

My adjustment was $14,000-something. However, whoever wrote the ninety-day letter went back to the original return as filed, whereas my report is based

on Revenue Agent Klein's previous examination, and the difference between $16,877 and the amount that I show as additional between income in my report is the difference that Mr. Klein set up.

The net result is exactly the same, where it says total of columns 2 and 3 hereof after Commissioner's adjustment. I have corrected income of $73,827.00 and so does this report here.

Q. Have you pointed out the only differences that you find?

A. That is the only difference as to Paul DeLucia.

Q. And that difference amounts to about $2,000?

A. $2,799.00 I believe, something like that.

Q. And then it winds up, if you analyze it further, it amounts to about the same thing.

A. Yes, sir. (141)*

One of these charts was an "Analysis of receipts and disbursements as shown on parole reports of Paul De Lucia," (Exhibit B) as prepared by Mr. Bernstein and is printed in the record, (56, 57). Mr. Bernstein and the Agents did disagree on the question of cash available in previous years. Mr. Bernstein, for the purpose of preparing some of his charts assumed that DeLucia received and had available the $404,000, plus the income reported as "Miscellaneous."

It is important to note the Government evidence as to just what Mr. Bernstein did say during the investigation in order to understand the use made of this after the prosecutor finished with twisting it around to include things not said. Your Honors need to understand the

* Later in the trial there developed a difference over the treatment of two $40,000 loans made to DeLucia by Hugo Bennett. Mr. Bernstein had considered them as cash available. The Agent Saldana threw the loans out. There is no point in detailing the grounds of this dispute as the proceeds of the loans are not required, if our position be understood.

difference between the view of the law of evidence manifested by the District Court and that applied by the Court of Appeals. Also, Your Honors should bear in mind our point that the error of the District Court in this regard affected the entire case, not just Counts I and II.

Regional Counsel King testified (451):

> Attorney King: Mr. Bernstein told me that he had made a very careful study of the case, and that he was convinced that the available cash to Mr. DeLucia over the period from 1935 to 1950 was sufficiently large to explain the excess expenditures over his receipts in the years 1948 and '49 and 1950.
>
> He exhibited to me two summaries, one showing available funds from 1935 to 1950, totaling approximately $922,000 and another summary showing a figure of cash on hand as of January 1, 1948 of $300,000. Other additions to income during the years 1948, '49 and '50 and expenditures during those years with a net cash on hand figure of $51,000 at the end of 1950.
>
> These figures demonstrated, according to Mr. Bernstein, that Mr. DeLucia had sufficient funds on hand to account for his excess expenditures during the years 1948 and '49 and 1950 over receipts reported.
>
> I asked Mr. Bernstein if I could make a copy of each of those summaries, and he complied with my request.
>
> I had my secretary make a copy of each of them, and I marked them as copies, and they are part of my file." (452)

In preparation of a table, "Annual Recapitulation-source of funds-per Paul DeLucia parole receipts," Mr. Bernstein showed "Funds on Hand,"

			Annual Carry Over
1947	$28,334.69	1947	none
1948	15,459.45	1948	$23,986.26
1949	52,275.45	1949	1,966.25
1950	63,045.79	1950	26,815.39
		1951	52,767.90

There was no substantial dispute concerning the figures upon which this table was based. The Government experts, by reducing the "gross funds available" (Exhibit 181, p. 341), concluded that DeLucia did not have in his possession enough funds to cover the expenditures shown in his books and on his parole reports. DeLucia had reported that some of the money spent in 1948, 1949 and 1950 was from "funds on hand." The opinion of the Government expert Saldana (525) was that DeLucia had spent this money from unreported income received in each of the indictment years. This opinion was of no value because Agent Saldana assumed the correctness of Exhibit 181 (341) including the assumption that DeLucia had only $48,697.01 at the end of 1947.

In our effort to avoid confusion and to acquaint the District Judge with the facts concerning the books and the Parole Reports, we made a motion, in the absence of the jury, before any evidence was heard. Our motion was to require the Government to make some showing that the books were inadequate before the Judge would permit the use of the net worth method.

The Trial Judge permitted petitioner to introduce evidence (49) in support of this preliminary motion, over the objection of the prosecutor. We called Mr. Bernstein, who, as we have said, had carried on negotiations with the Agents. Mr. Bernstein was familiar with the claims made by them, as well as the expenditures, as reflected in the books. At this stage of the case, the books were identified as exhibits A-1 and A-2 (670). During the trial before the jury the books were put in evidence (441) Mr. Bernstein in the pre trial hearing also introduced and explained to the Judge the other exhibits here listed, (670, 671) and certified to the Court of Appeals. These exhibits include charts prepared by Mr. Bernstein including the following (670)

B-1 Analysis of Receipts & Disbursements by months for years September, 1947 thru December, 1949

B-2 Analysis of Receipts & Disbursements by months for year 1950

B-3 Annual Recapitulation—Source of Funds for years, 1947, 1948 and 1950

C Summary of Income Adjustments thereto and Commissioner's adjustment to other—for 1953 thru 1943

C-2 Certified copy—Ninety Day Letter to Paul DeLucia 5-1-45

C-3 Certified Copy—Ninety Day Letter to George E. Browne 3-5-45

C-4 Certified Copy—Ninety Day Letter to Frank Nitto-deceased 5-1-45

C-5 Certified Copy—Ninety Day Letter to Louis Campagna 5-1-45

All of the exhibits certified to the Court of Appeals have been ordered here in connection with the record.

Concerning the years previous to those covered by the Ruggaber Report, the income tax returns had been destroyed by the Government. However, the Revenue Service possessed a record of the various amounts paid by petitioner. From the list of totals Agent Mahon (323) testified, as an expert, to his opinion relative to the amount of income made by petitioner in those years. Where the record of totals showed no payment for a given year, the expert gave as his opinion that no income had been made for that year. In such calculation Agent Mahon assumed that petitioner had truthfully reported all of his income for such years. At the request of the Government the Court gave an instruction (No. 57,

p. 579) based upon the presumption arising as to income. Agent Mahon assumed that DeLucia had no other funds available in addition to his reported income. The Court of Appeals said (herein p. 169):

> "The Government undertook to prove what assets defendant had on hand at the beginning of 1948 by means of showing his entire preceding financial history."

The Court of Appeals overlooked the difference between proof of assets and proof of income. A portion of this "entire preceding financial history" was reflected in the Ruggaber Report. The fact that this portion was based on hearsay was not noticed by the courts below.

It should be obvious to any one reading the record that the Government Agents were in no position to prove the financial history of petitioner in years prior to 1935. The record does demonstrate that the Agents undertook this task, or so pretended. Petitioner at no time made any financial statement. The assumption that DeLucia had no cash available, except that upon which he had paid taxes as income was destroyed by the evidence put in by the Government on another phase of the case. Hugh Garden, an architect testified (283) that petitioner in 1934 put up a large part of the $180,000 cash required to build an Italian Village at the World's Fair. The Government claimed that the books kept by Mr. Garden's firm showed funds traced to DeLucia amounting to $90,000 in cash. (G. 349)

On cross-examination of the expert concerning these years there appears the following, we quote (363):

> Mr. Stewart: You are assuming he paid honestly on every cent he made?
>
> Agent Mahon: A. That is the only inference I can make, that the man filed the proper return."

There was no evidence to support the opinion of Agent Mahon that DeLucia had nothing but the income on which he paid taxes.

There was nothing in the evidence to indicate that De Lucia had made any list of his assets for these years. Agent Mahon just assumed, without any evidence, that DeLucia had no capital. In order to further demonstrate to Your Honors the unreliability of the opinions expressed by Agent Mahon as an expert we show the manner in which he twisted the testimony and Report of Agent Klein.

As we have said, in 1940, Agent Klein (166) readjusted the income reported by DeLucia for 1938 and 1939, after an interview in which the agent examined the books then kept by petitioner. The Agent's Report shows (176, 178) various amounts designated as "Cash in Vault," "Cash in Pocket" and "Cash in Bank." Although Agent Klein had not said so, we feared that the jury may have obtained the impression that the interview and the Report may have indicated that petitioner said that these figures represented all of his cash, so we recalled Agent Klein (242) We quote:

> Mr. Stewart: Q. Referring to the conversation you had with Mr. DeLucia, which you testified to yesterday, and that conversation took about three hours in your office, during that time did you ask Mr. DeLucia if the cash you were talking about as being on hand at any particular period, opening and closing, was all the cash that Mr. DeLucia possessed or had?
>
> Agent Klein: A. I did not.
>
> Q. You weren't concerned with that?
>
> A. No, it didn't affect me.
>
> Q. Your memory of the books, as you remember them now, did they reflect or say that that was the total cash that Mr. DeLucia possessed?
>
> A. Well, the books just reflected the cash in three categories.

Q. And they didn't say it was all the cash, did they?

A. No, there was no notation. Just the categories and the amounts."

Your Honors will note that the above answers cover both the conversation and the books. Now please observe the manner in which the expert falsified in order to support his table. First Agent Mahon claimed that he followed the testimony of Agent Klein, then he said he followed the Report. He followed neither. As in the case of the manner in which this expert just denied the existence of the cross-examination of Agent Ruggaber, this Agent told a falsehood about the record concerning Agent Klein and his Report. In the cross-examination of Agent Mahon, there appears the following (366):

Mr Stewart: Q. I noticed as you were answering questions for Mr. Barnett that you referred to Mr. Klein's report and you read off some figures and you read them like as if that was the total cash, being cash-in-pocket, cash-in-vault and cash-in-bank, and you have given us your construction of Mr. Klein's testimony, haven't you?

Agent Mahon: A. I believe I followed Mr. Klein's testimony, sir. • • •

Q. All I want to know is that you are giving this jury your estimate of what Mr. Klein said, aren't you, and based on that you are concluding that Mr. Klein said that Paul DeLucia told Mr. Klein that that was all the cash he had?

A. I did not use the words "all the cash he had," Mr. Stewart. I said Mr. DeLucia told Mr. Klein that this was the cash he had and that he broke it down into three categories, sir.

Q. Yes, but it makes a lot of difference whether it was all he had or whether or not he had some more, doesn't it?

A. I gave him a very substantial amount, far in excess of Mr. Klein's figures, sir.

Q. But that isn't up to you, whether you are going to give it to him or not. It is a question of what Mr. Klein said. Mr. Klein didn't undertake to start you off with a place where Mr. DeLucia said this is all I have got. You don't understand Mr. Klein's testimony as such, do you?

A. I didn't use Mr. Klein's testimony to that extent, sir.

Q. Did you use it at all?

A. Only to the admission made by Mr. DeLucia as to cash on hand.

Q. Mr. DeLucia didn't tell Mr. Klein that that was all the cash he had, did he, according to the testimony?

A. From what I understand of Mr. Klein's testimony, Mr. DeLucia said my cash on hand is, and then he preceded to give him "cash in vault," "cash in bank" and "cash in pocket." That to me would indicate that that was his total cash on hand at that time, if that is your question, sir.

Q. That is right. That is your construction of Mr. Klein's testimony, isn't it, that you have just given us?

A. It is not a construction of Mr. Klein's testimony. It is a construction of what is shown in Mr. Kleins report.

I didn't refer to Mr. Klein's testimony, sir. I referred to Mr. Klein's report, which is in evidence and which speaks for itself. * * * I would say this: That the cash as indicated in Mr. Klein's report would indicate a statement of total cash on hand, sir, for the years 1938 and 1939.

Q. But Mr. Klein doesn't say that in his report, does he?

A. I would rather refer to Mr. Klein's testimony in the record, sir.

Your Honors will find Agent Klein's report printed in the record. (175) There is nothing in the report to warrant the opinion of the expert. The testimony of Agent Klein is to the contrary. (242) In a different case, without so

much confusion, misstatements and so many appeals to prejudice, it might be expected that a jury would give no heed to the opinion of this expert. In the case at bar, the Government was able to obtain convictions, in spite of the deliberate falsehoods shown. The lower courts gave no heed as to the utter worthlessness of the opinion of this expert.

Hugh Garden, an architect, testified (288) to having received large cash payments from petitioner, in 1934 for the purpose of paying contractors engaged in erecting the Italian Village. The Government introduced the books kept by Mr. Garden's firm to show that DeLucia had paid about $90,000. The following appears in the testimony of Agent Mahon (369):

> Mr. Stewart: Q. If you have overlooked important pieces of them, of course that lowers the value of your opinion, doesn't it?
>
> Agent Mahon: A. I don't believe that happened, sir.
>
> Q. Well, let's see if I can remind you of some place where it happened. How much cash did you say from your various figures, how much did Mr. DeLucia have at the end of 1934?
>
> A. At the end of 1934 I credited Paul DeLucia with no cash on hand, sir.
>
> Q. During 1934, what cash did he have available?
>
> A. His gross funds available during 1934 were $8,473.68.
>
> Q. Did you hear Mr. Garden testify here, the architect?
>
> A. Yes, sir.
>
> Q. Did you hear him say that $180,000 was spent in the Italian Village. Do you remember that?
>
> A. I heard Mr. Garden testify that the total investment was $180,000.

Q. And you heard Mr. Garden—

A. I am not finished, sir.

Q. I guess we all heard Mr. Garden's testimony.

A. But you didn't hear what Mr. Mahon has to say.

Q. You just throw that all out?

A. We did not hear Mr. Garden testify as to any investments made by Mr. DeLucia in any dollar amount, sir. He merely said that the total investment or cost of the Italian Village was $180,000 and I did not put any construction on what Mr. Garden said.

Q. But you must. You can't ignore the fact that Paul DeLucia had large sums of money, and some of it in thousand dollar bills, and brought it in and laid it on the table. You can't ignore that, can you?

A. We had not had any testimony as to what part of that money represented Mr. DeLucia's, if any of it did, sir. It certainly has not been used in our schedules as an expenditure.

Q. I know it hasn't been used in yours, but you don't regard that as his money because you have no evidence here that it was his money, is that right?

A. Because I could not prove that it was his money, sir.

The Italian Village went into bankruptcy later. From this fact the prosecutor argued that the $90,000 did not remain available to DeLucia. We quote from the argument (G. 340)

Mr. Barnett: Then you recall that we introduced the evidence concerning the bankruptcy of the Italian Village, showed the bankruptcy file. There are a couple of reasons for introducing the bankruptcy file. One of the reasons is this: Paul DeLucia apparently handled $90,000 in the year 1934. The bankruptcy file proves conclusively that he didn't get any of that money back. He didn't get any of that money back. It was a complete flop, a total loss. We don't know whose money that $90,000 was. We don't know how much, if any of it, belonged to Paul DeLucia. But whatever it is, it is money that went down the drain

> in that bankruptcy proceeding, and it is money that was not subsequently available to him for any purpose and could not have become a part of his cash on hand in any of these years that we have treated."

If the prosecutor did "not know whose money that $90,000 was" and his expert omitted it from his calculations why was the $90,000 proved in such detail? Just one of the many red herrings.

The bankruptcy file did not prove that DeLucia did not receive any of the money back. But even if it did, the District Court overlooked the significance of $90,000 passing through the hands of DeLucia in 1934. This showed the opinion of the expert Mahon to be worthless as evidence. Suppose that the defense had called Mr. Garden and produced the books of his firm to show that DeLucia had $90,000 in 1934 and this sum had not been considered by the expert. In such event, there may have been some sense to rebuttal evidence to show the bankruptcy. But to put in evidence and then to disown it, or try to destroy it, must be some new gimmick for use in net worth cases. Your Honors might compare this sort of juggling with the opinion of the same expert based upon the hearsay in the Ruggaber Report. Nobody ever saw any of the extortion money in the possession of DeLucia. The experts assumed that he received it as income with nothing to support the assumption but hearsay.

The Government produced an insurance agent, Michael Corcillo (292) from New York to prove that he had represented the company in the matter of bonds for DeLucia in 1943. Over $100,000 in cash was put up as collateral. This money was deposited by Mr. Bulger. The inference, we suppose was that the money was put up by petitioner. If it were not the incident had no place in the evidence. If DeLucia had $100,000 to put up in 1943 the expert opinion of Agent Mahon was further weakened. In the face

of no evidence at all as to whether or not DeLucia had this $100,000 as "cash available" it can not be said that the Government had shown "his entire preceding financial history."

The Court of Appeals found that, (herein p. 170):

> "During the period 1944 to March 1954 DeLucia was either imprisoned or on parole and his returns for that period disclosed no income that can not be readily accounted for upon the face of the returns."

This period includes the indictment years, 1948, 1949 and 1950, during which time DeLucia was on parole. When it is observed that the returns filed by petitioner disclosed no income not accounted for, the issue is narrowed down to the requirement that the evidence must now show, directly, or by circumstances, that in 1950 DeLucia received income not reported by him in that year. There is no direct evidence to any such income. There is no evidence of any kind of any likely source of such income. So the case boils down to the question as to whether or not the circumstances proved establish these vital requirements of law applicable to the net worth method.

The circumstantial evidence is insufficient to prove a source of income not reflected in the books and parole reports, upon which DeLucia had paid taxes. As we expect to show, the prosecutor argued to the jury that the circumstances proved a source, but the facts proved did not support any such conclusion. The return for 1950 reports a loss of $9,838.82 (Exhibit 22, p. 101). The computation made by Agent Saldana (Exhibit 226, p. 532) shows a net income for 1950 of $61,915.14. If DeLucia had received such income during 1950, such receipt would have been a parole violation. This violation would have taken place whether the income not reported was derived from legitimate or illicit sources. There was no dispute as to the accuracy of the figures to be found in the parole

reports.* When the testimony of Agent Stonesifer (379) concerning the books is examined, it will be seen that the only complaint, applicable to the issues, was that Mr. Bernstein showed "funds in hand", without identifying them further than to indicate that they came from DeLucia's personal funds. The veracity of the books and parole reports was not disputed. As to the amounts shown to have been from "funds on hand", the Government claimed that the prosecution had proved that these "funds on hand" came from current income. Petitioner introduced no evidence on the subject and stood upon his demurrer to the evidence, claiming that the Government had not proved the receipt of any unreported income. Nor did the Government prove any likely source of unreported income. The regulations required earnings and other income to be specified and to be reported and approved by the parole advisor.

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*The following is the copy of the form used.

DEPARTMENT OF JUSTICE
Penal and Correctional Institutions

MONTHLY REPORT—PAROLE

Parole Executive, Date .....
U.S. Board of Parole,
Department of Justice, ...
Washington, D. C. Print name here
Register Number.....

Sirs:

I respectfully submit the following report for the month of .....

My address is..... .....Telephone.....
Rt. or St. No. City or Town State

Mail Address .....

Have you changed your residence during the month? .....

If so, give date .....

Employer .....
Name of person or company Address

When petitioner was on parole in 1950, he was examined before the Kefauver Committee. The printed transcript of the Kefauver hearings is in evidence (Exhibit F.) The

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(Footnote continued.)

Have you changed jobs during the month? .....

If not working, why? .....

Nature of your work ..... Number of days worked.....

If you have not worked regularly, what has been your means of support? .....

Have you been arrested during the month? .....

Convicted? ..... Sued? .....

MONEY RECEIVED		MONEY SPENT	
Earnings from employment	.....	Rent	.....
Other Income (Specify)	.....	Payment on Debts	.....
.....	.....	Other	.....
Money Borrowed	.....	.....	.....
Relief (Source)	.....	.....	.....
.....	.....	.....	.....
Total	.....	Total	.....

.....

Signature of Parolee

Advisor's remarks: .....

.....

.....

I have seen the above-named personally ..... times; The above report is ..... true to the best of my knowledge or belief.

....

*Signature of U. S. Probation Officer — Signature of Advisor

Date ..... Date .....

This report must be submitted in duplicate to the United States Probation Officer, whose name and address are on your instruction pamphlet, before the third day of each month following that for which the report is made. If no Probation Officer is indicated, mail reports direct to the Supervisor of Parole. These report blanks must be secured from the Probation Officer, two each month. No change in plans may be made without permission from the Probation Officer. *When possible, use reverse for report of contacts or attach a copy of chronological record.

portions offered by the prosecutor were read to the jury. (G. 256 to 292.) Counsel for the Committee and the Senators asked a great many questions concerning assets and income. When asked about how much money he had when he came out of the penitentiary, DeLucia said he had about $300,000 in cash. He was not asked the source of this money or how long he had had it. Although the prosecutor must have known that the Government would be unable to prove this self-serving statement to be false, he put it into evidence. The reason the prosecutor proved a self-serving statement about $300,000 will be clear to Your Honors after we demonstrate the manner in which this evidence was first misrepresented and then used.

DeLucia was also examined by the Hoffman Committee, during the investigation of the granting of parole. A printed volume* of those hearings is also in the evidence. The $300.000 was not mentioned before the Hoffman Committee. DeLucia was not questioned concerning his income or assets.

During the investigation of income taxes for 1948, 1949 and 1950, the Intelligence unit of the Revenue Service wrote Mr. DeLucia a letter (406) requesting him to call at the office of the unit at a date set. DeLucia called, in the company of Mr. Bernstein and his present trial counsel. A transcript of that said there on September 1, 1954 was put in evidence by the Government (406). DeLucia was not questioned at that meeting, nor did he say anything. The Revenue Agents said there that they knew about the testimony of DeLucia before the Kefauver Com-

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*As is shown by this printed volume, Chairman Hoffman assumed that DeLucia and Campagna had extorted the money and demanded not only the revocation of the paroles, but restitution of the money.

mittee, concerning the possession of $300,000. The Agents said that that $300,000 had not been considered to date and that that was part of the purpose of the investigation. (422) That the testimony of DeLucia was not corroborated and they would like to clear it up. (424). When the matter reached the desk of the Government Attorney Joseph King, (448) in charge of "evaluation and disposition of criminal tax cases," another letter was written, requesting DeLucia to call. Petitioner did not answer. A copy of this letter was mailed to Mr. Bernstein, who responded and called upon Attorney King in 1954.

We quote from Mr. King (451):

> Mr. King: "I told Mr. Bernstein that the pertinent question in the case was the source of the expenditures over reported receipts. I told Mr. Bernstein that I was aware of the representations made before the Intelligence Division in behalf of the tax payer concerning the $300,000 and that I was very much interested in knowing the source of this alleged sum of $300,000, where Mr. DeLucia had kept it, if he had it, and any other defenses or contentions that Mr. Bernstein desired to present to me in behalf of Mr. DeLucia."

Later, on November 19, 1954, Mr. Bernstein called on Mr. King accompanied by Mr. Bulger. A transcript of the testimony given by Mr. Bulger was put in evidence by the Government (456). Mr. Bulger told Mr. King that he had seen $300,000 in possession of Mr. DeLucia. Mr. Bulger was also called before the Grand Jury which returned this indictment. He again gave testimony about the $300,000. A transcript before Agent King (Exhibit 196, p. 455) and before the Grand Jury (236 to 250) was put in evidence in the case at bar. This testimony was alleged to have been false and said by the prosecutor to be the key to this case.

(547) A substantial part of the case for the Government rested upon the claim of the prosecutor that the Government had proved a connection between the testimony given by Mr. Bulger relative to the $300,000 and the case against DeLucia. The District Court held that such connection had been proved. The District Court by instruction (No. 102, p. 588) assumed that this statement was made, that it was material and within the jurisdiction of the Revenue Service. The Court of Appeals held that there was a failure of proof (herein p. 165):

> "The Government in order to establish a connection between Bulger's testimony and DeLucia's intent to defraud relies on two points. The first is that at the Grand Jury hearing on DeLucia, Bulger testified that he had given the testimony before King at the request of DeLucia. DeLucia was not present at this hearing. A transcript of this was read into evidence in the trial below. DeLucia's counsel objected to the admission of this evidence in that it was not competent as to DeLucia. With this we agree. This evidence was perfectly proper as to Bulger under Count IV but as to DeLucia under Counts I and II it was nothing more that hearsay."

We respectfully submit that the Court of Appeals erred in not also holding that this was hearsay as to Count III. This is true because of the manner in which the prosecutor presented the case for the Government; the argument and the instructions. We expect to demonstrate to Your Honors from the record, that the prosecutor made use of his claim that the testimony given by Mr. Bulger was an important part of the case against DeLucia on all counts. Further we expect to show that the District Court, by reason of a mistake as to the law applicable, gave instructions at the request of the Government, to embrace the

erroneous theory of the prosecutor. At the same time, the Court refused instructions designed to protect De Lucia, if possible, against the use of evidence not admissible against petitioner.

If DeLucia had had a possible likely source of income other than that reported, such source would have been ground for a violation warrant.

Attorney King testified (452):

> "Mr. Bernstein told me that at the time of Mr. De Lucia's parole from the penitentiary, there had been a great deal of publicity, and as a result a number of Government agencies had been watching him; these agencies being the Federal Bureau of Investigation, in so far as Mr. Bernstein believed, the Immigration Service, and possibly the Treasury Department.
>
> He stated that people were following his every movement, cars were being watched that entered and left Mr. DeLucia's home, and that it was for that reason that Mr. DeLucia did not care to get in touch with the people who came forward and paid his taxes before he was released on parole.
>
> He pointed out to me that Mr. DeLucia felt that if he had communicated with those people that possibly those people would be the subject of Government investigation." (453)

The Court refused an instruction (No. 144, p. 604) tendered by DeLucia, intended to inform the jury that the law required him to comply with the rules of the Parole Board. The prosecutor said in argument to the jury (554):

> Mr. Barnett: "I think the inference is clear that his association remained [illegible] throughout the period he was on parole, and he had available to himself the same source of income, whatever that may be, that he had prior to the time he went away to the penitentiary."

The Court of Appeals said herein p. 170:

> "We think the jury could very easily have believed that DeLucia simply did not report his income from such illicit activities during the period that he was on parole, but did continue to receive such income out of which he made large expenditures during the years in question."

Without the slightest foundation, the Court of Appeals assumed the existence of evidence upon which the jury might easily believe this vital fact. The Court of Appeals makes no mention of any circumstances proved upon which to base this assumption, but the following, (herein p. 170):

> "During the period 1944 to March 1954, DeLucia was either imprisoned or on parole and his returns for that period disclosed no income that can not be readily accounted for upon the face of the returns. However, his return for the year 1954, which was the first year he was free of parole, reported $76,512 from 'Personal wagering at tracks, etc.' His 1955 return reported $86,050.92 from the same source and his 1956 return reported $78,460 from 'miscellaneous'."

When the prosecutor produced the 1954, 1955 and 1956 returns and read the amounts off to the jury, there was no indication of his purpose. In his argument, (554) he drew the inference adopted by the Court of Appeals. The District Judge refused an instruction (No. 144, p. 604) tendered by petitioner as follows:

> "144. During the period of time in which DeLucia was on parole, the law required him to comply with the rules of the Parole Board, including a regulation that he be not guilty of any crime or misconduct. During the period of parole the obtaining of money by means of gambling, or any other means in viola-

> tion of the law, would have been regarded as a violation of parole. In the absence of any evidence to the contrary, it will be assumed that DeLucia, during said period, did not obtain money by means of gambling or any other unlawful means."

In his argument the prosecutor said, (551):

> "And now, I would like to talk to you about this problem—it is not really a problem because if we have a tight starting point, as I think we have, it isn't necessary to do anything further. Once you show the expenditures, you are entitled to infer that those expenditures are from income received in the year in which the expenditures were made."

Your Honors will find that there was no "tight starting point." Then in argument the prosecutor went back to what DeLucia had said to the Kefauver Committee about not being allowed to associate with people he had previously associated with. (550) The prosecutor mentioned the argument made by Mr. Bernstein to Mr. King that DeLucia could not have any business operations because of the surveillance. The Government called Thaddeus Wilczak (515), a former employee of petitioner's son-in-law during 1948, 1949 and 1950. The son-in-law an Electrical Contractor had done work for the race tracks and book making establishments.

The prosecutor asked the jury to infer from the relationship (by marriage to his daughter) between petitioner and this son-in-law, that it must have been through the influence of DeLucia that these jobs were obtained. No other witness was called on the subject. The prosecutor merely assumed that the son-in-law obtained the contracts because of influence exerted by DeLucia. Such influence,

if it could be proved would have been a parole violation. We again quote from the argument (553):

> Mr. Barnett: "Then back in Chicago, the witness Wilczak testified to the influence of Paul DeLucia in getting contracts in connection with Sportsman's Park and various bookies."

The witness Wilczak (515) had not testified to one word concerning the influence of DeLucia. Your Honors will note that the prosecutor first puts in a bit of evidence calculated to raise a suspicion and then in argument claims to have proven a fact. The witness had called at the home of petitioner and had seen certain people in the home. From that fact alone the prosecutor drew the inference that petitioner had an income derived from dealing with those people. We again quote from the argument (552):

> Mr. Barnett: "After he was on parole, he met with Francis Curry and Tony Accardo, Hugo Bennet and others, whose names we do not know, met with them at his farm house in Kendall County, Illinois, met with them in his home in River Forest, Illinois, used influence to obtain work for his son-in-law, wiring the bookies in Chicago and Cook County, electrical wiring of booths, a Sportsman's Park man."

The following is copied from the testimony of DeLucia given before the Kefauver Committee (G. 270):

> "Mr. Robinson: James Curry; what business was he in?
>
> Mr. DeLucia: Curry is a land owner. He had a farm.
>
> Mr. Robinson: What else do you know about him? What other business was he in? Was he in the gambling business?
>
> Mr. DeLucia: No.

Mr. Robinson: What did he do after he left your place?

Mr. DeLucia: I don't know. I didn't see him anymore. I was told not to see him anymore.

Mr. Robinson: Who told you that?

Mr. DeLucia: Oh, my parole man told me. You see, when I came out, my lease with him expired in March, the next March, you see. So he said he come there and get his stuff, and he was around, and I was told that I shouldn't have anything to do with him.

Mr. Robinson: Didn't you know that he went into the gambling business?

Mr. DeLucia: No; I never saw him anymore."

Francis Curry rented the farm while DeLucia was in prison. Hugo Bennett was an employee of Sportsman's Park Race Track and a personal friend. Nothing was shown in evidence as to who Tony Accardo may have been. The attorney who handled the matter for Mr. Bennett testified to the preparation of mortgage papers in the matter of a loan to DeLucia. (474) The transcript of the Kefauver Hearings show that Mr. Hugo Bennett was thoroughly examined by that Committee concerning these loans and his dealings with DeLucia. Mr. Bennett was not called in the case at bar. Same as to Francis Curry, he was fully examined there but not called here. No attempt was made to account for the absence of these witnesses. The prosecutor drew an inference that DeLucia had an unreported income from insufficient facts. It is quite clearly indicated in the record that the inference drawn was contrary to the facts, if more of the facts revealed by the investigation had been put in evidence here.

Then in argument, the prosecutor pointed to returns made after DeLucia was released from parole. The large income reported under miscellaneous was used to create an inference as follows: (554)

Mr. Barnett:

"Mr. DeLucia's returns before and after the parole period show income sources such as gambling or miscellaneous. These things, I believe, lead to a fair inference that Mr. DeLucia while he was on parole never ceased whatever the activities were that produced the income for him prior to 1944, and he came out in the open on his returns with it after he was released from parole. But I don't think for a minute that he abandoned his old associates while he was on parole and then took up with them again after he came off parole.

I think the inference is clear that his association remained the same throughout the period he was on parole, and he still had available to himself the same source of income, whatever that may be, that he had prior to the time he went away to the penitentiary."

Judge Miller said in *United States* v. *Frank*, 151 F. Supp. 866, 870:

"Gambling does not give rise to a state of affairs presumed to continue once established; * * *"

The District Court refused the following instruction (604):

"143. Gambling does not give rise to a state of affairs presumed to continue once established. So if you believe DeLucia had income from Gambling in prior years, no presumption arises as to Gambling income in the indictment years, in the absence of evidence of Gambling in the indictment years."

The fact that petitioner's parole reports were approved and he was discharged from parole should carry considerable weight, where the Government, as here, relies upon inferences based upon inferences, conjectures and suspicion.

Judge Storey said in *Ricard* v. *Williams*, 20 U.S. 105, 7 Wheat 59:

> "And this, upon the plain principle, that every man should be presumed to act in obedience to his duty until the contrary appears."

Regardless of the opinion one may have concerning the character of petitioner surely he should be given credit for ordinary intelligence, if not more.

The Court refused the following instruction (No. 184, p. 616) tendered by petitioner:

> "184. When a mans' conduct may as consistently and as reasonably from the evidence be referred to one of two motives, one criminal and the other innocent, it is your duty to presume that such conduct is actuated by the innocent motive and not the criminal."

When Agent Mahon considered the record of taxes paid in 1934 and preceding years it was assumed that DeLucia had always obeyed the law. When it suits the Agents to do an about face they assume that he not only violated the law but risked a long term in the penitentiary.

If, as the Court of Appeals said, "the jury could very well have believed that DeLucia simply did not report his income from such illicit activities—" such belief was not based upon any evidence in the case. The Court of Appeals should not only have noticed the absence of evidence, that Honorable Court should have considered that DeLucia had a great deal at stake. It was necessary that he avoid illicit activities, or the appearance of any. It should be difficult for an unprejudiced person to believe that DeLucia would not only take in over $60,000 during 1950 from illegal sources, but that he would file an income tax return showing a loss and at the same time report to the Parole Officials large expenditures on the farm. During 1950, he knew

he had to remain on parole for years. He was not discharged until 1954. He knew when he filed his 1950 return that he was under investigation and that the various officials had plenty of time to check his returns and his records. He did not dare to refuse requested explanations, for fear that the Parole officials would regard his refusal as bad conduct and issue another warrant. To believe he would do all of these things knowing that about all of the Government Agencies and the Congressional Committees were looking for evidence upon which to put him back in the penitentiary for over seven years more, appears to be far-fetched. DeLucia knew very well from previous litigation, if not otherwise, that if the Parole Officials found evidence to indicate a parole violation petitioner would not be entitled to a trial in court. A hearing inside the walls of the penitentiary was all that he could expect. We expect Your Honors to agree that from the circumstances that DeLucia paid on a large income for 1954, 1955 and 1956, will admit of more than one inference. It is not reasonable to infer that such fact indicates that during 1950 he was receiving more income than he reported.

Why not infer that during 1950, because of the parole he stopped gambling and other such activities. He spent sums on improvements and equipment for his farm in the expectation that it would bring in enough income for support. Income that he could report to his tax lawyer for the purpose of keeping records. Income from a legitimate source which could be seen and checked by the officials. Such was the only conduct shown by the evidence. It was bad enough to find that the prosecutor indulged in what he thought, without any evidence. But it is difficult to explain how the Court of Appeals came to think the same thing, unless that Honorable Court lost sight entirely of the circumstances proved as distinguished from what had not been proven.

The prosecutor, over the objection of petitioner, introduced a line of immaterial evidence which no doubt confused the issue and prejudiced DeLucia. After DeLucia made an application for parole, the Chairman of the Parole Board called upon him in the penitentiary. During the interview DeLucia denied receipt of any of the extortion money (442). The Government put a witness, Gibson (472) a deputy warden, who had taken the history of DeLucia to prove that petitioner had not mentioned $300,000 to him. After petitioner was released on parole, the Hoffman Committee investigated the granting of parole. Before that Committee, DeLucia again denied the receipt of extortion money. (446) DeLucia was taken before the Grand Jury while on parole and there asked by the prosecutor if he had received this extortion money. The prosecutor put the denial made by petitioner into evidence in the case at bar. (490) After a warrant for parole violation was served and a writ of habeas corpus was issued,* the Government in its return relied upon the

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* Your Honors take judicial notice of the record in this habeas corpus case and a printed copy is on file here. **United States ex rel. DeLucia v. O'Donovan**, 82 F. Supp. 435, affirmed 178 F. 2nd 876. Petition for Certiorari dismissed 340 U.S. 886. Companion case, **Campagna v. Hiatt**, 82 F. Supp. 435, Affirmed 178 F. 2nd 42. Affirmed by divided court, 340 U.S. 880, 107 F. Supp. 347. In the habeas corpus proceeding it never became necessary to try the issues as to whether or not DeLucia had received extortion money. The Government admitted the truth of the Traverse and maintained that sole jurisdiction was given by law to the Parole Board. This position proved to be unsound. The judges held that the Courts do have jurisdiction without waiting for an administrative hearing when it appears that a warrant has been issued arbitrarily.

warrant. In order to show that the warrant had been issued arbitrarily, DeLucia, in his Traverse, recited some of the history of his troubles with the Government. Among other things, he denied that he had received the extortion money. (442)

Then the petitioner was again examined before the Kefauver Committee where he also denied the receipt of any extortion money. (Exhibit 216, p. 510, G. 256) These denials may have been truthful insofar as the evidence discloses. Truthful or false, they had nothing to do with the charges made in the indictment. DeLucia never, at any time, claimed that the money he had spent, or accumulated, came from this extortion money. We complained in the courts below and asserted that the Government should not have been permitted to prove these denials as they were prejudicial and immaterial. We asserted that after the Government had predicated its case on the Report of Agent Ruggaber, including the claim that DeLucia had received the extortion money, the prosecutor should not be permitted to switch from that position. Particularly in view of the fact that in order to compromise, DeLucia had acceded to that previous position and the compromise had culminated into a judgment.

In his argument to the jury, the prosecutor revealed his purpose in blowing hot and cold, in proving by Agent Ruggaber the receipt of extortion money and at the same time proving denials. The prosecutor in closing argument pointed to one of the charts and said, (G. 311)

> "Mr. Barnett: I would like you to notice how Mr. DeLucia's rise in standard of living is keyed into the extortion income which he received, or which the Government has always contended that he received, for the period 1935 through 1940."

The prosecutor in his argument recited in detail the following from the evidence where DeLucia had said that petitioner had not received the extortion money. (G. 315)

1. In the petition filed in the Tax Court.

2. In his Traverse.

3. Before the Hoffman Committee.

4. That said by Mr. Bernstein when the settlement was made.

5. Before the Kefauver Committee.

6. He didn't tell the Warden Gibson of having money in the attic.

We quote (G. 318):

> "Mr. Barnett: Six times under oath Mr. DeLucia has denied that he had any part in the extortion money, six times under oath. * * * Ladies and gentlemen, the soul of the Biblical character Ananias resides within the carcasses of both of these defendants here on trial and the truth is a stranger. They tell any story that comes in their heads, that suits the convenience of the moment."

DeLucia had not testified at the trial nor had any statement made by him been introduced, except the self-serving statement about having $300,000 to the Kefauver Committee. The prosecutor had no right to call DeLucia a falsifier. Prejudicial argument is bad enough, but our main object in demonstrating its unfairness is to show Your Honors that the conviction was obtained because of the errors of the District Court and the Court of Appeals failed to notice. The prosecutor and the District Judge believed that under the law, DeLucia was responsible for that said by the lawyers and Mr. Bulger. The Court of Appeals perceived that this was error, but the Court of

Appeals failed to note that this error surely contributed to the conviction under Count III. It is clear that the prosecutor did not limit the above prejudicial argument to any particular count. How can a court of review say that a conviction would have resulted if the case had been fairly presented as to Count III?

The Government did not put these denials in the record to show that DeLucia did not receive extortion money. The denials could not be said to be proof of an inconsistent statement made by DeLucia out of court, for impeachment purposes, as there was no other statement made by petitioner to contradict or impeach. The Agent Mahon (341) and Sladana (525) assumed the availability of the $227,000 from extortion in making up their charts.

The argument of the prosecutor reveals that the evidence of denials was put in to serve a double purpose.

(a) To contradict the defense theory predicated on that said by Messrs. Bernstein and Bulger.

(b) To show that DeLucia is a bad man in general.

The Court of Appeals perceived that (a) was not proper as it made use of evidence not admissible against petitioner. The Court of Appeals erred in limiting this finding to Count I and II.

As to (b), in order to show Your Honors that (b) was one of the calculated purposes we quote from the final argument. (G. 425)

> "Mr. Barnett: Here is a man who for years has denied he had anything to do with the extortion money and now he wants to claim it. It is history.

He lied to Mr. Gibson in the penitentiary. • • •

He didn't tell him about the $300,000. • • •

He lied through his agent Bernstein and to his agent Bernstein about the receipt of the money when he was charged with it for tax purposes.

He lied in the Hoffman Committee hearings, he lied to the parole grand jury.

He lied to the Kefauver Committee about the receipt of the extortion money.

Are we to believe now that he had $300,000 in a tin box in his attic?"*

This is a man who finds it virtually impossible to tell the truth. It is easier for him to tell a lie than it is to tell the truth."

At the conclusion of the argument for new trial the District Court read from a

Statement made by the Court in answer to points made on motion for new trial

from which we quote (666):

By the Court: The jury has found defendant Paul DeLucia, also known as Paul Ricca guilty on three counts. Defendant's own sworn testimony negatived his defense of his alleged $300,000 hidden cash. The jurors unequivocally manifested their disbelief by their three signed guilty verdicts."

There had been no sworn testimony given by petitioner about $300,000 ***as a defense.*** **DeLucia swore to the possession of $300,000 in 1950 before there had been**

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* DeLucia never said at any time or place that he had $300,000 in a tin box in his attic. The Government proved that Mr. Bulger said that. The veracity of DeLucia was not an issue in the case. When the prosecutor said that DeLucia lied to Mr. Bernstein such argument is based on the fact that Mr. Bernstein had told the Agents that DeLucia had denied to him, Mr. Bernstein, the receipt of extortion money. Mr. Bernstein told this to Mr. Marsh during the negotiations for settlement.

any case to defend. The prosecutor conjured that up as a defense by charging petitioner with that said by others. Your Honors will note that the District Judge made this error as to all three counts. Although the prosecution had not established the fact that DeLucia had only $48,697.01, at the end of 1947, it is understandable that the prosecutor might argue that Mr. Bulger could not have counted $300,000 because DeLucia did not have that much. But such argument had its place, if any, in the conspiracy case. In the income tax case it is understandable that the prosecutor might argue that at the end of 1947 DeLucia did not have enough on hand to cover his expenditures in 1948, 1949 and 1950. If DeLucia had put in the defense falsely attributed to him and DeLucia had told the Agents during the investigation that his expenditures came out of the money counted by him and Mr. Bulger in the attic the picture would have been different. But here we have a case where the Government put in evidence the sworn testimony of DeLucia before the Kefauver Committee that when he came out he had $300,000. The Government was unable to prove that statement to be false. The Government was unable to prove that DeLucia had ever said anything different, yet he is called a falsifier because the prosecutor was permitted to erect a man of straw for the purpose of demolition.

The Court of Appeals failed to perceive our point. We fear that that Honorable Court failed to comprehend the issues and the evidence. The Court of Appeals said (herein) p. 172:

> "DeLucia also contends that the Government switched its position in regard to the alleged hoard of money that he had. However, with this we cannot agree inasmuch as it appears from the record that *the Government has always contended* that DeLucia did receive *a large sum through extortion* and that it has been taken into account in the itemization of DeLucia's

> income. If anybody is changing positions, it is the defendant who has at times denied that he received the money and on other occasions *claims by innuendo* that this constituted the sum from which he made the various expenditures in the years in question." (Italics added.)

"A large sum through extortion" means nothing, unless the Court of Appeals could determine from the evidence just what that sum happened to be. The above holding overlooks the issue as to whether the Ruggaber Report was evidence as to the amount.

The Court of Appeals may have adopted the above phrase *"The Government has always contended"* from the argument of the prosecutor. That Honorable Court made no mention of the fact that the Government over objection introduced evidence of six denials. What was the prosecutor contending then? The Court of Appeals failed to answer our question *i.e.*, if the Government at the time of putting in these denials was not proving that DeLucia did not get the money what was the purpose?

The Court of Appeals, when that Honorable Court found that

> "• • • *the Government has always contended* that DeLucia did receive a large sum through extortion • • •"

was correct, if the position of the prosecutor be fully understood. The prosecutor put in evidence of the receipt of extortion money and intended that that should stand uncontradicted, so long as the jury would accept the figures composed by the Agents. The prosecutor put in the denials not as a change of position. The prosecutor took it both ways. The position of the Government was not to be affected by the denials but the denials were to be used to contradict the theory said by the prosecutor to be the theory of the defense. This theory was the straw man

erected by the prosecutor on evidence not proper to consider against petitioner. Of course the Court of Appeals must have failed to perceive all of this, in holding that *"the Government has always contended"* that DeLucia did receive a large sum through extortion.

As to the finding of the Court of Appeals that DeLucia switched, there is no evidence to support this conclusion. Petitioner has always denied receipt of the extortion money. The only way one can conclude that DeLucia switched, is to adopt the erroneous theory of the prosecutor as follows:

(a) DeLucia denied receipt.

(b) Mr. Bernstein, during the investigation, indicated by innuendo that DeLucia received extortion money.

There can be no question about (a). DeLucia has always denied receipt. As to (b) the Court of Appeals has held that the prosecutor had no right to that position. DeLucia never uttered a word that could be taken as an *innuendo*. We expect to show that the prosecutor, in his argument, explained where he claimed the innuendo took place. We repeat from the above quote from the Court of Appeals:

> "* * * DeLucia did receive a *large sum through extortion and it* (a large sum) has been taken into account * * *"

The question is, *what sum was taken into account?* Please remember that as the prosecutor put the $300,000 into the case as something DeLucia lied about, the District Court followed this up by instructing the jury that the statements made by Mr. Bernstein and those made by Mr. Bulger were material. This certainly was applied to the case by the jury as to Count III. How can it be said that the errors only affected Counts I and II? In other words, it was

assumed in the argument by the prosecutor that DeLucia was responsible for explanations made by others.

As we quote from the argument here and in the following pages, Your Honors will note of course that the record shows no objection. We chose to not object on purpose, as a matter of trial strategy. So we are not now basing our claim of error on the prejudicial argument. Not in the usual sense. Your Honors reversed in cases where it appears that in argument, the prosecutor has taken advantage of his position. It becomes necessary to quote from the argument in order to show the position taken by the prosecutor. If that position is understood to have not been founded on evidence, proper to consider against DeLucia, Your Honors then will be able to see, not only the manner in which the prosecutor gained his guilty verdicts without proper evidence, but Your Honors will also be able to perceive the manner in which the District Court was deceived, and how the Court of Appeals missed the point. The false position taken by the prosecutor could have been rendered less harmful, maybe, if the jury had been properly instructed. So our complaint is directed at the erroneous instructions given and the refusal of ours. Really our complaint ultimately reaches our contention that the Court of Appeals failed to perceive that the issue was not that stated by that Honorable Court. The prosecutor spread the issue all over the lot. The District Court permitted such tactics in the giving of instructions tendered by the Government. Here again in the matter of instructions, the Court of Appeals failed to notice that the errors contributed to the conviction under Count III. As we have pointed out, the prosecutor used that said by Messrs. Bernstein and Bulger to Agent King as if DeLucia had said these things. The prosecutor said over and over that that said by others in the investigation constituted a statement

of our defense. In answer to the claim made in both lower courts that DeLucia was bound by statements made by Mr. Bulger in the presence of Mr. Bernstein, the Court of Appeals said (herein p. 165):

> "Secondly while it is probable DeLucia would have known Bulger's story to be false.* There is absolutely no competent evidence showing that DeLucia knew Bulger was to testify or had testified before Agent King. While it is true that Bernstein had been DeLucia's tax attorney for a number of years, this does not prove that DeLucia was informed of all that Bernstein did in relation to the former's tax matters. As to whether DeLucia told Bulger what to say and whether he intended that the story should be related to Agent King or at any other time is, from the competent evidence in the record, mere speculation. * * *"
>
> "We, therefore, hold that there was a total failure to prove a necessary element of the offense charged in both Count I and Count II; that the evidence is clearly insufficient to support the verdict of guilty as to those two counts; and the District Court erred in denying DeLucia's motion for judgment of acquittal on Counts I and II."

Yet the Court of Appeals did not notice that the prosecutor made use of that said on September 1, 1954 by the lawyers and that said by Mr. Bulger as if DeLucia had said it.

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*Here again, without evidence the Court of Appeals assumes the falsity of the sworn testimony given by Mr. Bulger about the $300,000. In view of the holding by the Court of Appeals to the effect that that said by Mr. Bulger was not properly charged to DeLucia, it should not matter to Your Honors, in considering this petition, whether it was false or true. We can be quite certain that the jury was not satisfied with the claim of the prosecutor that it was false. This from the not guilty verdict.

The prosecutor said in argument (547):

> Mr. Barnett: So, fundamentally, the key to the entire case is the truth or falsity of that story about the $300,000. The reason for this is this: If the story is true, we do not belong in this court room. If that story is true, Mr. DeLucia could have spent the money that he did spend in 1948, 1949 and 1950, out of that $300,000 hoard, and therefore it would not be taxable income to him during those years."

DeLucia has never said anywhere, or any place, that the $300,000 he claimed to have possessed came from extortion money. It could be said of the conspiracy case against Mr. Bulger and petitioner that the central issue as to Count IV was the existence or non-existence of $300,000. Your Honors will note that the prosecutor said that the $300,000 was the "key to the entire case."

In 1954, the Agents, by writing a letter to DeLucia requesting him to call, endeavored to force petitioner to take a stand about the $300,000. We quote from the above transcript (424):

> Mr. Stewart: If you are not willing to believe him when he said he had $300,000, if he said that over again now 300,000 times, repetition would not add anything.
>
> Agent Stonesifer: Let me say this: I have read that in reading the Kefauver Committee testimony.
>
> Mr. Stewart: Yes.
>
> Mr. Stonesifer: That's only the place that I have seen it.
>
> Mr. Stewart: Yes, and they asked questions to indicate—
>
> Mr. Stonesifer: Mr. DeLucia may or may not I don't know—want to add to it.
>
> Mr. Bernstein: You are fortified in that because of this money.
>
> Mr. Stonesifer: I am not talking about money; I am talking about adding to the explanation."

This suggests that the Agents realized that more was needed by them in the way of having DeLucia take some definite position. DeLucia said nothing at this conference. So in the case at bar, the prosecutor tried his case as if *"the defense position"* was that the expenditures came out of $300,000, which had been counted in the attic by Mr. Bulger, as if DeLucia had said the $300,000 so counted was a part of the extortion money. *"The defense position"* was based upon a plea of not guilty. DeLucia had never said that the $300,000 came from extortion money, nor had he said anything about Mr. Bulger in connection with the $300,000. The Court of Appeals was no doubt deceived by an unfounded statement by the prosecutor, as to what constituted the *defense position.* This misconception caused the Court of Appeals to believe that a question for the jury was involved in a choice between $48,697.01 and the $300,000. If the record had been understood it would have been seen that that there were two questions for the jury:

(a) Was the starting point for the beginning of 1948 properly fixed at $48,697.01? Or to be more exact, was any starting point fixed for any amount for the beginning of any year?

(b) Did DeLucia have $300,000 in cash in his home at the beginning of 1948?

If the jury found (a) not proven, the jury never need bother with (b) as then the amount possessed by DeLucia at the end of 1947 was immaterial. If the jury believed that (b) was shown, the jury need not bother with (a), because if DeLucia in fact had $300,000 at the beginning of 1948, it did not matter how long he had it, or where it came from. That was enough to cover his expenditures for 1948, 1949 and 1950. The jury, if properly instructed, could very well have found neither (a) or (b) proven and

acquitted on all counts. The prosecutor, with the aid of the instructions, may have caused the jury to believe that a choice had to be made between $300,000 and $48,697.01. The finding of the Court of Appeals that an issue had been created for the jury between $300,000 and $48,697.01 should demonstrate to Your Honors that that Honorable Court was deceived by the manner in which the prosecutor had built his man of straw. If Your Honors comprehend, from the record, that the Court of Appeals misconceived the issue and consequently failed to require evidence of a starting point and a likely source, surely the judgment must fall.

On the motion for new trial the District Court said as to Instruction No. 102, (588) there referred to as No. 4, the following: (667)

> "The Court: I feel that the argument on the instruction on Count 4, if it hadn't been limited and confined to Count 4 in specific terms, might have had merit. But having been limited entirely to Count 4, and the jury having found both defendants not guilty on Count 4, it is of no consequence now as to what effect the instruction had upon them, although I still believe—and would give it again if called upon—that it is a perfectly sound instruction to give to the jury, pointing out the materiality of the very basis upon which the jury must pass, not as to whether the $300,000 was or was not there, but as to whether it is material to the issue in the case."

When the Court said "was there", His Honor, we believe, refers to the attic and the testimony of Mr. Bulger. The Court here said this was a jury question. But His Honor had taken that jury question from the jury.

After the trial which consumed only about two weeks, when the jury was about to take the case, the Trial Judge said, (602):

"By the Court: We could have wasted a year on figures and confused the jury and confused everybody, and probably in the end would have accomplished less than we have accomplished here."

Whether or not the jury became confused by the figures, we shall never know. The Court of Appeals has held that the District Judge failed to properly weigh the evidence, and lack of evidence, on some important applicable points of law. After Your Honors examine the instructions given at the request of the Government hereinafter set out, it will be seen that the jury had been misdirected as to the law. The District Judge had recently come to the Federal Bench from the State Courts. The Court gave the defense the benefit of the practice prevailing in the State Court by going over the forms of instruction tendered by petitioner (603) marking those not given as "Refused" and ordering that these refused instructions be made a part of the record. (600) The Court said that some of petitioners instructions were refused because in theory they were not consonant with the *Holland* and *Freidberg* cases (G. 302).

The prosecutor informed the Judge that he had gone over the instructions tendered by petitioner and had prepared one continuous charge * * *.

The record shows that after copies of the instructions tendered by petitioner were delivered to the prosecutor, the charge finally given to the jury was prepared by the Government (G. 305):

Mr. Barnett: * * * "including and embodying among our instructions the instructions of theirs that we felt you would be warranted in giving, so the instructions you read could be read as one continuous sequence. That is the reason we included among our instructions many of theirs that we felt were justified and in the sequence we thought should be followed."

When the instructions were read by the Judge to the jury, the paragraphs were not numbered. By agreement afterward they were numbered. (629) Those prepared and so tendered by the Government are numbered 32 to 126 inclusive. (572) Those originally tendered by the defense and adopted by the prosecutor are numbered 1 to 31 inclusive. (566)

On the subject of circumstantial evidence, the Court gave two instructions at the request of petitioner (Nos. 12 and 13, p. 568). None of these given instructions supplied the rule of law to be applied where the Government seeks a conviction on circumstantial evidence alone. The Court refused instructions tendered by petitioner, based upon such a situation. (No. 140 p. 603; No. 160 p. 608; No. 179; p. 614; No. 180; p. 615) The Government did secure a conviction upon circumstantial evidence alone. There was no other evidence. We submit that it was error to refuse to instruct on the law to be applied in such a case. During a discussion between Court and Counsel relative to the instructions at the time of petitioner's motion for acquittal, there appears the following (543):

> "The Court: Let me add something that has been troubling me all through the reading of your instructions and the cases. I may be off base, but all the cases talk about circumstantial evidence. I don't agree with that in this case. You have got written reports every month to the Parole Board. You have sworn testimony before official bodies. That seems to take it out, in the main, from the circumstantial cases. At least, in a major part. There are some expenditures, yes, but in the main when you have written or sworn statements under oath covering the basis for expenditures, as you (Mr. Barnett) say this is an expenditure system, you remove it completely from the circumstantial group. You put it into a more direct evidence"—

This error on the part of the District Judge might be explained in part by a misconception of the dispute about the Parole Reports. The Judge said (545):

> "The Court: Do not these reports indicate income *or lack of income* as well as expenditures?" (Italics added)

The income indicated on the Parole Reports was not disputed by the Government. Of course DeLucia did not report any income from an illicit source. The income he did report was identified as to source and was thoroughly checked. The expenditures indicated on the Parole Reports were not questioned either. The Parole Report did not show *"lack of income"*. If they had been of such nature, DeLucia would have been back in the penitentiary on violation of parole. Balances were struck by Mr. Bernstein in the books. An addition of the expenditures did not exceed the funds shown by the books to be available. The Parole Reports did show that expenditures could not have been made from current income alone. They showed that some of the money came from "funds on hand." The prosecutor claimed that the evidence outside of the books, the charts prepared by the experts showed that at the beginning of the indictment years, DeLucia did not have sufficient money in his personal account to cover all of the entries designated as "funds on hand." If this was proved at all, it was proved outside of the Parole Reports by circumstantial evidence. So the Parole Reports, if properly understood did not make a direct evidence case out of this circumstantial evidence case. Of course the District Judge knew the difference between direct and circumstantial evidence. The confusion was created by the prosecutor, who claimed that the Government did not need proof of the circumstances, said by Your Honors in the *Holland* case.

to be necessary to a net worth case. The prosecutor claimed the right to rely upon an alternative method. We expect to show that there was no foundation in the evidence for any alternative.

The Court overruled the preliminary motion concerning the books made by petitioner. The Government, after an opening statement, proceeded with evidence. When the Government reached the witness Agent Stonesifer, the prosecutor made an attempt to show inadequacy. This Agent had examined the books before trial. Agent Stonesifer expressed an opinion that the books were inadequate. We quote (386):

> Mr. Barnett: Q. Now, were you able to verify whether or not the 1947, 1948, 1949 and 1950 returns of Mr. Paul DeLucia were prepared from these various books which you have testified to?
>
> Agent Stonesifer: A. Yes I was.
>
> Q. And were they prepared from those books?
>
> A. Yes, sir.
>
> Q. Now, you have stated that the books were inadequate to reflect a net taxable income?
>
> A. Yes, sir.
>
> Q. For what reasons were the books inadequate to reflect net taxable income?
>
> A. Well, the cash receipts credited to Mr. DeLucia's personal account in the ledger did not indicate the source from which they were received. Another thing, the opening cash balance on hand was not recorded on the books. That is, the cash on hand that Mr. DeLucia may have had. The fact that the date, the written data, checks, and so forth, check stubs, were not available to support the records from which it was prepared, made it incomplete because the records couldn't be verified as being accurate. Then, there were sales of some farm products which the books didn't show who the products were sold to; they just said the nature of the income, such as "Dairy in-

come'' and similar items. Then, as I recall, there were also some disbursements which the books did not show who received the money, who the payee was.

Those were the respects in which I considered the books inadequate to determine the correct taxable net income.

Q. Were the canceled checks at any time made available to you?

A. No, sir, they were not.

Q. Would that have a bearing on whether the books were adequate also?

A. Yes, it would.

Q. What bearing would it have?

A. Well, it would verify disbursements as to who received disbursements. In cases where the payee was not named on the books, it would also verify that the payee named on the books was the one who received the cash and received it in that year and in that amount.

Q. You made reference to opening cash not being set up on the books?

A. Yes.

Q. Under what circumstances would it have been necessary to set up opening cash on the books?

A. Well, in the absence of the substantial cash receipts being recorded, without any source of those receipts being shown, it would be necessary to have an opening cash balance recorded and to know the source of that opening cash balance.

If this claim of inadequacy be tested by the books and the evidence, it will be found inapplicable to the issues in the case at bar. The source of the money was indicated from ''funds on hand'' in the parole reports. Agent Stonesifer called them ''cash receipts''. They were not designated by Mr. Bernstein as ''cash receipts'' in the sense that they were current income. Not being income for 1948, 1949 and 1950 and no claim having been made other than the fact that the funds were capital, the source was imma-

terial. The "source" took place in years previous to 1948, 1949 and 1950, so it should have been no concern of the Agent, except that he may have been disappointed to not find evidence to support an indictment for 1948, 1949 and 1950. We quote from the cross-examination (401):

> Mr. Stewart: Will you agree with me that accountants—you have already told me different accountants have different ways of going at this business of keeping books. Would you agree with me that accountants, being expert as you are, might differ in opinion as to whether or not the books are adequate?
>
> A. Well, adequacy for accounting could be an entirely different thing than adequacy for income tax purposes.
>
> Q. And adequacy from the standpoint of the taxpayer could be adequate from his standpoint and yet unsatisfactory to use in an investigation, isn't that true?
>
> A. Well, unsatisfactory to me as an Internal Revenue Agent, yes, sir, for the purposes for which I was looking at them.
>
> Q. Yes, you were looking to see if you could find more income that possibly hadn't been paid on, isn't that right?
>
> A. No, sir, I was interested in the source of any cash receipts on the books in order to determine whether it was income or was not income."

Your Honors will find that the checks, check stubs, money paid and received as to the farm and such matters were not in dispute. There is no claim that DeLucia had any unreported income for those years, as to the matters recorded in the books. Surely the Agent did not call the books inadequate because he did not find illicit income there recorded, or the extortion money listed as capital.

It must be remembered that the books were kept in order to satisfy the parole officials, concerning the correctness of any item reported on the parole reports. If the

parole officials required DeLucia to give further particulars as to what was meant by "Dairy income", or if the parole officials questioned an expenditure, details could be supplied. This claim of inadequacy made eight years after the entries were made is obviously an afterthought. If all of the evidence be understood, it will be observed that the Agents never questioned the accuracy of the books or parole reports, insofar as those exhibits purported to give information as to income and expenditures. The parole reports showed living expenses as required. The books did not show living expenses as the books were kept also for the purpose of preparing income tax returns.

On cross-examination (398) Agent Stonesifer admitted that he had not included in his Reports made in previous years at the time of the examination of the books anything about finding the books to be inadequate. Nor did the Commissioner, as far as he knew, make any finding on the subject.

During the trial, as appears from the testimony of the Agents, the Agents went over the exhibits introduced by Mr. Bernstein. Aside from a minor differences, involving not over $2,000 (which were explained and did not change the picture), the Agents did not question the accuracy of the figures submitted by Mr. Bernstein. (139) A study of the entire record in the case at bar, will demonstrate that Mr. Bernstein took practically the same figures used by the Agents and came out with a surplus of cash available, for expenditures in the indictment years. As we have said, the Agents came out with a shortage for 1948, 1949 and 1950. Mr. Bernstein even assumed, for the purpose of making his tables, that DeLucia had nothing as cash available at the end of 1934. Mr. Bernstein assumed, for the purpose of making the charts introduced on our preliminary motion, that DeLucia had available during 1935

to 1941, about $404,000. This figure was based upon the 90 day letter, which in turn was founded on the Ruggaber Report. (245) The Agents took the figure $227,000 from the same 90 day letter report, after the adjustments mentioned above and explained by Mr. Ruggaber. The Court of Appeals said (herein p. 168):

> "DeLucia also contends that where he himself kept a set of books and records the District Court erred in permitting use of the net worth method of proof. This would mean that simply because taxpayer has kept a set of books, the veracity of which is in question, the Government is estopped from going beyond those books to prove their falsity or inaccuracy. This is absurd."

The veracity of the books was not in question, unless Your Honors hold that books kept for the indictment years are required to show cash on hand at the opening and the source of capital acquired in previous years. The Court of Appeals has misconceived our point. We did not ask the District Court to bar the books absolutely. We requested the Court to rule that before the books be disregarded for another method, the Government be required to make some showing of inadequacy. It is apparent that in the investigation made by the Agents, information to be found in the books and reflected in the parole reports, was used as a foundation. The Agents have never questioned the accuracy of the entries to be found in the books, or on the parole reports. It is true that Agent Stonesifer was not satisfied with the entries made to show money coming from a personal cash account. But that was not claimed to be a false entry. The money did come from cash on hand, insofar as the evidence shows. The Agents wanted to know just where DeLucia obtained that money. The point missed by the Court of Appeals is this—the District

Court should have compelled the prosecution to make a showing. The prosecution made its showing later. The District Judge should have done either one of two things, after all of the evidence was heard, *i.e.*

(1) Grant the motion of acquittal on the ground that the net worth method was not applicable in the face of accurate books.

(2) Leave the question to the jury under proper instructions.

The District Court did neither, (1) The Court denied our motion for acquittal and (2) the Court erroneously instructed the jury, at the request of the Government and refused proper instructions tendered by petitioner. The Court gave the following (No. 94, p. 586) on motion of the Government.

> 94. On the question of intent to evade, and just by way of illustration and not by way of limitation, there are certain matters which you could consider pointing to intent so far as tax evasion is concerned if you found they existed in this case. These are general illustrations: Concealment of assets, covering up sources of income, handling one's affairs to avoid the making of usual records, and any conduct the likelihood of which would be to mislead or conceal. And if the tax evasion motive plays any part in such conduct, the offense may be made out even though the conduct I have mentioned might also serve some other purpose."

There is no evidence of "concealment of assets." The expenditures recorded in the books as having come from "funds on hand" were said by the Government to have come from current income. This would be just the opposite of claiming assets where no assets existed. There was no source of income to cover up. Surely there was no evi-

dence that income for 1948, 1949 and 1950 was covered up. It was spent and the expenditures were fully recorded. There was no evidence of "conduct the likelihood of which would be to mislead or conceal." There was no evidence that DeLucia handled his affairs during 1948, 1949 and 1950 to "avoid the making of usual records." There is nothing unusual shown about the records as they pertained to the farm and such things recorded in the books. There is no evidence that DeLucia had any affairs to handle during his parole except those properly recorded. The instruction (No. 94, p. 586) may be sound law as applied to some other case. Here it was misleading and not applicable.

The Court refused the following (Nos. 153, 154, and 155, p. 607; and No. 163 p. 609):

153. In an income tax evasion prosecution wherein the Government intends to show tax evasion by evidence of taxpayers receipts and expenditures, the burden is upon the Government to show, before resorting to another bookkeeping method, the inadequacy of the books employed by the taxpayer.

154. The Government must introduce evidence, other than its own computations, to discredit books and records of taxpayer such as proof of unrecorded transactions or internal evidence within books themselves showing incompletness or inaccuracy.

155. The Commissioner of Internal Revenue has discretion to use a method other than the bookkeeping method regularly employed by the taxpayer only when such method employed by the taxpayer does not reflect the true income.

163. If the figures in the books kept for DeLucia are correct the books are sufficient to show net income. Of course the books on their face are not conclusive of the proper figures. If not accurate, whether by inadvertence or fraud, such fact could have been

shown on behalf of the Government by other evidence. But in the absence of other evidence of inaccuracy—you will regard the books and the figures entered therein for expenses and upon which to calculate net income as substantially correct.

Mr. Bernstein testified during the preliminary hearing out of the presence of the jury, after describing the books (50) that the books were correct and accurate and that he used them in preparation of the parole reports and the income tax returns for 1948, 1949 and 1950 (51). Agent Klein (169) described the books kept by DeLucia for 1938 and 1939:

Agent Klein (171): A. * * * he explained his method of bookkeeping was to put the money that he received into the vault, and whenever he took anything out he put a slip of paper in, what he took out, or a bill that he paid, and then those items would be entered into this book, as disbursements, or expenditures * * * I asked him if he kept any records of his gambling gains and the source of those gambling gains, and he said, "No."

Mr. Stewart: Q. And when he told you that that is his method and it had been his method in previous years, you didn't raise any objection to that method, did you?

A. You couldn't raise any objection to that method.

Q. As a matter of fact, you had seen that method adopted by other people who had income which they just preferred to put under the general heading of "Miscellaneous," isn't that right?

A. That is right.

Q. And the Government took the position that so long as the Government got its money, it didn't care where the taxpayer got it from?

A. Well, we always did ask the source.

Q. But you didn't always get the information?

A. No, we did not get the information.

Q. And, if you didn't get the information, you would go ahead and compute the tax as best you could from what information you had?

A. That is right,

On cross-examination Agent Stonesifer said (403):

Agent Stonesifer A. Well, my knowledge of the use of the word "bank roll" was in connection with the investigation of bookmakers returns, horse racing bookmaker's returns. They would operate at a location where they would take in money for bets and pay out on winning bets, and on hand at that location they would keep an amount of cash with which to finance these activities, and that to my knowledge is what they referred to as their "bank roll".

By Mr. Stewart: Q. You examined books kept in that manner as best you could in your duties as a Revenue agent, didn't you?

Agent Stonesifer: A. Yes, I examined the returns of the people in that business.

Q. Although you were not very well satisfied with that method of keeping books, you did check the return with what you could find, isn't that right?

A. I would check the returns with whatever records they had, yes, sir.

Q. That is right, and merely because these records don't please you or suit you, there is nothing much you can do about it unless you recommend some action to your superiors, isn't that right?

A. There is nothing I can do about past records, that is true, that have been made, I can recommend future action."

The prosecutor said in argument (G. 420):

Mr. Barnett: "In other words, those people are above the law. They can report what they feel like reporting. The rest of us have to pay our taxes. The man that is in business, that keeps books, he has got to make them available to the tax collector and show him where his source of income is."

It is not correct to say that people are above the law under the circumstances. They desire to pay their taxes, but do not wish to furnish evidence of illegal conduct. It is not true that the man in business must show his source, unless he claims money received in the year to be non-taxable. This appeal to prejudice was all the more reason why the Court should have given some of the refused instructions. The Court refused to give the following instruction offered by petitioner (No. 211, p. 625):

> 211. No statement as to any other transaction other than those contained in the indictment, upon which the defendants are being tried are to be considered by you as evidence of guilt in this case, and should be entirely disregarded by you in deliberation on the guilt or innocence of the defendants.

When the prosecutor argued concerning the manner in which people report what they feel like reporting, and compared bookkeeping methods to business men's books, the jury may have understood this to also apply to the books kept for 1938 and 1939. DeLucia was not on trial for those years. Agent Klein accepted the books for what they were worth and adjusted the income. DeLucia paid the additional tax and that should have been the end of that insofar as the books are concerned. Agent Mahon, as an expert, assumed the truth of the figures reflected in the books as adjusted by Agent Klein. DeLucia was not on trial for having kept inadequate records in 1938 and 1939.

In order that we may show the manner in which the prosecutor shifted the burden of proof to petitioner by pretending that DeLucia had made previous explanations as to where the money came from to cover expenditures, we first examine the testimony given by Attorney King, who said that Mr. Bernstein had submitted two summaries

showing available funds (452). These summaries were copied by Mr. King and placed in his file. Mr. Barnett assigned the following designation to copies of these summaries, (453) "Government Exhibit No. 195." When the defense made an objection to the introduction of these summaries, Mr. Barnett withdrew Government Exhibit No. 195 (455). So the summaries are not in evidence. Yet when it came to the closing argument, the prosecutor treated the summaries as if they were in evidence. That is not the only error. If our complaint were based only on the fact that Exhibit No. 195 was not in evidence we would not even mention it. The prosecutor argued that these summaries constituted an explanation made by DeLucia. Our point here is that when the Court of Appeals held that the District Court erred in holding DeLucia responsible for that said by Mr. Bernstein, the Court of Appeals should have noticed the manner in which the prosecutor had built a man of straw, by claiming that the law made DeLucia responsible for that said by Mr. Bernstein. The real harm did not flow from that said by Mr. Bernstein. It was the manner in which the prosecutor used this. The prosecutor claimed that this was our defense. Further that in view of the fact that the Government had proved the defense as false, the prosecutor was relieved by law from showing a starting point or a source. We quote from the closing argument (G. 318):

> Mr. Barnett: "The closest we ever come to having an admission by him (DeLucia) that he received any part of the extortion money is when Mr. Bernstein went into Joseph B. King's office, the Regional Counsel of the Internal Revenue, and submitted two financial schedules. At that time, Mr. King was permitted by Mr. Bernstein to copy the financial schedules which Mr. Bernstein had shown Mr. King and to which he had alluded. One of those schedules was a document

prepared by Mr. Bernstein which Mr. Bernstein said would show that Mr. DeLucia had available resources at the beginning of 1948, from which these expenditures could have come, and, that document within its body states 'two-ninths additional income, four hundred and four thousand eight hundred and ninety-four—and he has nine cents and we have thirteen cents. He wouldn't call it extortion money. He said 'two-ninths additional income' though the figure is practically identical. That is as close as we ever come to hearing that Mr. DeLucia had received any of this extortion money.

Mr. Barnett: How is it possible for Mr. Stewart now to suggest that he would have gotten considerably more than the four hundred thousand that we credit him with having received? * * *"

The prosecutor had no right to say that this statement by Mr. Bernstein was proof that DeLucia had said that petitioner had received extortion money. Mr. Bernstein, acting as a lawyer, was trying to dissuade Attorney King from recommendation of criminal action. In his argument, Mr. Bernstein took figures from the 90 day letter and tried to convince Mr. King that if such figures be taken as true, no case could be proved by expenditures. We trust that we have explained the manner in which Agent Ruggaber arbitrarily reduced the $404,000 to $227,000. So Your Honors must understand that when the prosecutor said that the Government had given DeLucia credit for having received $404,000, this statement by the prosecutor just was not true. In the chart (Exhibit 181, 341) Your Honors will find in the fourth column under the heading "Unreported Extortion Income" a total of $227,781.46.

We quote further from the argument (G. 314):

Mr. Barnett: "Now I want to say further word about that $404,000 of extortion money. We say that we have given Mr. DeLucia in our computations in the

case full credit for every dollar of extortion money that he could ever have received based upon the testimony at the extortion trial at New York."

This is an irresponsible statement based upon hearsay. Now we trust that Your Honors will perceive some of our reasons for so much detail concerning the foundation of the Ruggaber Report. The prosecutor promotes a report based upon hearsay to foundation for a claim that the report shows all that DeLucia "could ever have received." The prosecutor ignores the cross examination (262) which we have quoted, where Agent Ruggaber admitted that he had no way of knowing how much, if any, money had been obtained by DeLucia.

We continue with the argument (G. 315):

Mr. Barnett: "There is not a scintilla of evidence that he ever received any more money out of the extortion than the $404,000 that we have given him, even though Mr. Stewart attempted to draw that inference from the cross-examination of Revenue Agent Ruggaber."

Here the prosecutor casts the burden on petitioner. There was nothing but hearsay to prove that petitioner had received any extortion money. There is not a scintilla of proper evidence to prove that DeLucia received $404,000. This is a strange way for the prosecutor to argue, his figure has no foundation, so he argues that in the absence of other proof his figure must be accepted. We continue further with the argument (G. 315):

Mr. Barnett: "Mr. Ruggaber said that on the evidence that he had available from that extortion trial, Mr. DeLucia received two-ninths of the total of $1,800,000 that was paid out in extortion funds, and that two-ninths came to $404,894.00. It has never been

admitted that Mr. DeLucia ever got that $404,894, until Mr. Stewart in this court room attempted to get an inference that he could have received more of that extortion money than we have given him credit for, there has never been a suggestion that he got any more. There has never been a suggestion that he got as much."

As Your Honors have perceived we did more than to "get an inference," we caused Agent Ruggaber to admit that he had no knowledge of how much or how little money was obtained. Your Honors will note that the prosecutor argues as if the law required DeLucia to explain his position about the extortion money. The prosecutor infers that an admission came too late from his trial lawyer during the trial. As Your Honors must know, from the record, the trial lawyer never admitted that DeLucia obtained any money by extortion. It is fundamental that a trial lawyer may assume the truth of various claims made by the witness or the prosecutor without being held to have made an admission binding as a matter of evidence upon his client.

We quote from the following said by the Court after verdict, to show that the District Court had been moved by the improper and prejudicial argument made by the prosecutor (667, 668):

By the Court: "The silence which the defendant chose to maintain throughout his trial was at his own peril. Not one word was uttered in mitigation of his offense. I anticipated that.

In the hope of winning an acquittal by creating a reasonable doubt, it was argued that the moneys expended by the defendant could have been procured by him in previous years from illegal extortion, gambling, business racketeering, et cetra.

True, the spurious theory might have raised a legal inference, but the jurors ignored it. After a guilty verdict such contention cannot mitigate but must aggravate the offenses.

It is the brand of criminality, brazenly advanced in open court, that has a tendency to demoralize our youth, corrupt our adults, and disgrace our nation as dissolute and lawless. It has irreparably menaced our general welfare, and is an alarming threat to our people.

Admittedly, the defendant has flagrantly violated the laws of his adopted country, since his entry under an alias. He was convicted and given the maximum sentence of ten years for extortion. After his release from prison, and while on parole, he defrauded the Government for three successive years."

We repeat from the above,

The Court: * * * "the silence which the defendant chose to maintain throughout his trial was at his own peril."

Your Honors said in the *Holland* case that this was a good rule, where the Government had first established a case. Not applicable here. But the prosecutor by casting the burden improperly on the defense no doubt made this case look like the *Holland* case to the Court. We again quote from the above.

The Court: "In the hope of winning an acquittal by creating a reasonable doubt, it was argued that the moneys expended by the defendant could have been procured by him in previous years from illegal extortion, gambling, business racketeering, et cetra.

True, that spurious theory might have raised a legal inference, but the jurors ignored it. After a guilty verdict, such contention cannot mitigate but must aggravate the offenses."

If the Court had not been carried away by the improper argument of the prosecutor how could His Honor designate this as a "spurious theory." The Government, by the Report of Agent Ruggaber, claimed to have proved receipts by extortion. By the Report of Agent Klein the Govern-

ment proved money obtained by gambling. Such was the case for the Government. The question arose as to the amount received, not where it came from. There was nothing else for the defense to argue. Could the defendant have claimed that the money did not come from illicit sources? We again quote from the above:

> The Court: "It is the brand of criminality, brazenly advanced in open court, that has a tendency to demoralize our youth, corrupt our adults, and disgrace our nation as dissolute and lawless. It has irreparably menaced our general welfare, and is an alarming threat to our people."

The Court had refused petitioner's instruction No. 211 (625) as follows:

> 211. No statement to any other transaction other than those contained in the indictment, upon which the defendants are being tried are to be considered by you as evidence of guilt in this case, and should be entirely disregarded by you in deliberation on the guilt or innocence of the defendants.

Apparently His Honor lost sight of the fact that petitioner was not on trial for other offenses. We again quote from the above:

> The Court: "Admittedly, the defendant has flagrantly violated the laws of his adopted country, since his entry under an alias. He was convicted and given the maximum sentence of ten years for extortion. After his release from prison, and while on parole, he defrauded the Government of taxes for three successive years."

As Your Honors know, petitioner had paid the penalty for having conspired to extort. The Court of Appeals when that Honorable Court reversed the judgment as to Counts I and II overlooked the fact that if the District Court had

had a proper conception as to the issues and what petitioner had been tried for, the sentence may have been different as to the whole case.

We now return to the opinion of the Court of Appeals in order to demonstrate that because of the confusion that Honorable Court failed to fully understand the record.

The Court of Appeals said, (herein p. 172):

> "If anybody is changing positions it is the defendant who has at times denied that he received the money and on other occasions claims by innuendo that this constituted the sum from which he made the various expenditures in the years in question."

Now perhaps with the above argument of the prosecutor in mind, Your Honors will learn just where in the record the Court of Appeals found an innuendo. The innuendo was drawn by the prosecutor from that said by Mr. Bernstein to Attorney King, from the questions asked by defense counsel and the argument of petitioner's trial lawyer. There is no other place in the record, as far as we can learn, for the Court of Appeals to have found anything about a claimed innuendo. The opinion is silent as to what was regarded by the Court of Appeals as an innuendo.

This casting of the burden on petitioner by the prosecutor was rendered more prejudicial by the following instructions (No. 55 and 56, p. 578) given at the request of the Government:

> 55. Where relevant leads are not forthcoming, the Government is not required to negate every conceivable source of non-taxable funds, and if the defendant, Paul DeLucia, failed to supply information to the agents in that regard or if you find that he supplied a false explanation, you may take such a failure or falsehood into account.

"Every conceivable source of non-taxable funds" was not involved. In his books DeLucia showed that some expenditures must have come from funds on hand. Whether leads were forthcoming or not as to "every conceivable source" the Government was obliged to show by evidence that the expenditures did not come from "funds on hand". DeLucia did supply the information in his returns, his books and his parole reports. So the Court was wrong in covering what might happen if DeLucia failed to supply information. DeLucia supplied no information proven to be false, so that portion of the instruction was prejudicial. The whole instruction (No. 55, p. 578) casts an improper burden on DeLucia to supply more information that that given.

During the investigation DeLucia had a perfect right to furnish nothing more than that which had been furnished. It was plain error to instruct the jury that the absence of leads should be taken into account. This is especially prejudicial in the light of the argument of the prosecutor along a similar line. We repeat one substance of the above instruction (No. 55):

> " * * * if the defendant, Paul DeLucia * * * supplied a false explanation, you may take such * * * falsehood into account."

This points up another instance in which the Court of Appeals erred. That Honorable Court held that the error as to Counts I and II left Count III free of error. The Court of Appeals overlooked the fact that the above instruction meant the following:

> * * * if the defendant, Paul DeLucia through either Mr. Bernstein or Mr. Bulger supplied false information etc.

Certainly such instruction was misleading as to Count III. It was perhaps a good instruction on the Government theory that petitioner was responsible for Messrs. Bern-

stein and Bulger. But when the Court of Appeals held that it was error to so charge DeLucia with that said by others that Honorable Court should have perceived that it had knocked the props out of the conviction under Count III.

> 56. In determining whether or not the calculation of the Government is reasonably accurate, you may consider whether the Government has run down all reasonable "leads" suggested to the agents, tending to establish his innocence, and has explored all explanations, if any, advanced by the defendant or his *representative* during the investigation. Obviously improbable explanations would not be entitled to as much weight as plausible and reasonable explanations. If you should find that the Government's investigation has failed to refute what seem to you plausible explanations, such failure may be considered by you in determining the validity of the *starting point*. If you are satisfied that all such reasonable leads and explanations have been exhausted or refuted this would be persuasive evidence which you could consider in determining whether the Government's calculation is reasonably accurate. (Italics added)

The vice of the above instruction is not only the fact that DeLucia was made responsible for that said by Mr. Bernstein "during the investigation". The above instruction assumes that DeLucia had made explanations during the investigation. In fact DeLucia made none.

The Government put into evidence the transcript of the conference of September 1, 1954 before Agent Smith (Exhibit No. 19, p. 406) which shows a letter addressed to petitioner from which we quote (406):

> "Investigation of your income tax liability for the years 1948, 1949 and 1950 is about to be concluded. It is the policy of this office prior to the completion of income tax investigations to afford the tax payers in-

volved an opportunity to incorporate in the record such explanations touching on the material matters as they deem advisable.

Pursuant to that policy, therefore, you are informed that such an opportunity is now available and it extends to you personally. The proceedings if any, will be recorded and counsel may be present."

DeLucia was notified that the Intelligence Division was considering criminal prosecution. DeLucia made no statement. The above argument of the prosecutor, together with the above erroneous instructions, surely gave the jury an improper understanding of the law applicable. The jury was told by the prosecutor and the Court that DeLucia was obliged to make explanations, as well as other misleading and inapplicable rules. These errors may help to explain to Your Honors the manner in which the Government was able to secure a conviction without sufficient evidence. Surely these errors influenced the jury as to Count III as well as to Counts I and II. The Court of Appeals understood that it was error to charge DeLucia with explanations made by his attorneys as to Counts I and II, but failed to perceive that the same errors should have resulted in reversal as to Count III. After Your Honors note the above misleading and prejudicial instructions permit us to repeat from the above quoted argument of the prosecutor:

> Mr. Barnett: * * * "there is not a scintilla of evidence that he ever received any more money out of the extortion * * *"

Your Honors no doubt perceive from the record the unfairness of the whole procedure. First the prosecutor introduced the Ruggaber Report and the Government experts adopted a great reduction from the figures in that Report. Then because DeLucia did not show that he had received more than the arbitrary figure, the jury was requested to

believe that that figure had to be accepted. Instead of this, the District Court should have perceived that the Ruggaber Report was worthless as evidence and should have directed acquittal.

The Court in the above instruction referred to a *starting point* and left it to the jury to guess what evidence was supposed to create such a point. In fact there was none proved. The fact that there were no

> • • •"leads suggested to the Agents, tending to establish his innocence" • • •

could not possibly be properly considered by the jury in the determination of a non-existent starting point. The moment DeLucia was informed that the Agents were considering an indictment, he had a right to expect, in any forthcoming trial, to be presumed innocent. No duty existed to require him to furnish leads "tending to establish his innocence." The fact that that said by others, reasonable or unreasonable, true or false, was refuted could not possibly be considered as persuasive evidence that "the Government's calculation is reasonably accurate."

It is possible that if the Court had given the following instructions (No. 164, p. 609; No. 169, p. 612; No. 182, p. 615 and No. 197, p. 620) the harm of Nos. 55 and 56 may have been lessened.

> 164. If you find that the determination by the agents to be arbitrary and excessive, it may not be reasonably held that Paul DeLucia is bound to pay a tax he does not owe. There is no duty on Paul DeLucia to establish, by evidence other than his returns, the correct amount of taxes that lawfully might be charged against him. In other words, the burden never shifts to Paul DeLucia. Paul DeLucia is permitted by law through his lawyer to contest the findings and conclusions of the agents, without assuming the burden of proof.

169. DeLucia is not required to prove himself innocent by assuming the burden of overcoming any prejudicial effect of the mass of exhibits, estimates and conclusions which the Government has placed in the record, if put there upon any theory that it is up to the defendant to explain all of it away, as part of his burden to prove his innocence. There is no such burden.

197. The Fifth Amendment to the United States Constitution guarantees that no one need to be a witness against himself. This right is intended to protect the innocent as well as those guilty, because a person might avail himself of that right, it does not follow that he should be regarded as guilty. His action should not be used in a court at all and a jury would have no right to be prejudiced against any person who might claim such right.

The Court appears to have accepted the opinion of the prosecutor concerning just which instructions tendered by petitioner were justified and the Court would be warranted in giving (G. 305). The prosecutor no doubt realized that if any of the above refused instructions had been given the verdicts might be not guilty.

When we urged in the Court of Appeals that the case was fatally defective for lack of a starting point, that Honorable Court said: (herein p. 169)

> "As a result of this investigation the Government contended that DeLucia could not have had more than $48,697.01 at the beginning of 1948.
>
> The cash on hand at that date was the central issue in the case, *the defense position being that there was at least* $300,000 *on hand* and the Government's position that there was no more than $48,697.01. The jury resolved the issue against DeLucia and we can not say that in doing so, the verdict is not adequately supported by the evidence." (Italics added.)

After Your Honors understand this record it will be observed that surely the Court of Appeals would not have made the above finding except for a serious misapprehension. The chart, (Exhibit 181, p. 341) prepared by Agent Mahon showing $48,697.01 is based, for a starting point on the Report of Agent Ruggaber. That Report in turn is based upon hearsay. The figures concerning that received by DeLucia are based upon an arbitrary assumption.

So when the Court of Appeals said: (herein p. 169)

> "As a result of this investigation, the Government contended that DeLucia could not have had more than $48,697.01 at the beginning of 1948"

that Honorable Court overlooked the fact that this was a contention with no proper support in the evidence. If the jury ever resolved that the figure $48,697.01 was correct and that finding entered into the basis for the verdict, the verdict was not adequately supported by the evidence. We say "If the jury ever resolved." Nobody could say what the jury resolved, except to find guilt. The issue was not as stated by the Court of Appeals. The Court of Appeals has not stated all of the contention made by the Government. Of course the Judges of the Court of Appeals know that you cannot have a question for the jury, based upon the mere contention of the Government. That Honorable Court failed to perceive that there was no evidence but the unfounded opinion of the expert, *i.e.* that the $48,697.01 figure was correct. It may have been wrong to the extent of hundreds of thousands of dollars. Also, that Honorable Court has not understood "the *defense position*". We hope to make clear to Your Honors that the issue was not at all like that above stated by the Court of Appeals. Also when Agent Mahon (323) calculated the $48,697.01 and Agent Saldana adopted that figure, the experts assumed as a fact that DeLucia had paid taxes on extortion money

and had available only the computed figure, after Agent Ruggaber finished with adjusting the income received. In this respect (no starting point) the verdict was not supported by evidence. The Court of Appeals was also in error in finding that *"the defense position"* was *"that there was $300,000"*. The defense position was that the plea of not guilty required the Government to prove its case. The law required that, as a vital part of the proof, a starting point must be established by evidence not by assumptions. The *"defense position"* *"that there* was at *least $300,000"* was taken by the prosecutor in argument from that said by Mr. Bernstein during the investigation. The Court of Appeals perceived that it was error to attribute to DeLucia that said in the investigation by Mr. Bernstein, yet that Honorable Court found that the *"defense position"* was based on that said by Mr. Bernstein. The *"defense position"* at the trial was that the Government had failed to prove its case. There may have been nothing about $300,000 in the evidence, if the Government had not put it in. If DeLucia had been on trial alone as to Counts I, II and III and the District Judge had understood the following three things, the District Court would not have permitted proof of the $300,000.

1. DeLucia was not to be charged with that said by Messrs. Bernstein and Bulger.
2. DeLucia never explained that the $300,000 came from extortion funds.
3. DeLucia made no explanation during the investigation and was not obliged to make one.

In such a trial the Judge would not permit the Government to prove that Mr. Bulger said he counted $300,000, merely to allow the prosecutor to claim that this was a false statement. The Government would have been re-

quired to put in a net worth case. Then if Mr. Bulger testified for DeLucia that the lawyer had counted $300,000, then and not until then would the door have been opened for the Government to prove the falsity of the testimony of Mr. Bulger. If one should say that in a joint trial this $300,000 counting business was admissible under Count IV only, Your Honors know by now that the evidence was used by the prosecutor and the lower courts against DeLucia.

Without the privilege of claiming falsity, the Government would not offer the self-serving testimony given by DeLucia to the Kefauver Committee, that he had $300,000 when he came out. Please bear in mind that DeLucia did not say he kept it in the attic. He did not mention Mr. Bulger in connection with the $300,000. He did not tell the Senators that the $300,000 came from extortion. He denied this. So it follows that if Your Honors took this case and reversed and remanded it, the case could be retried without the $300,000, if the evidence be properly limited to the issues under Count III. In such event, the "key to the entire case" would not be in the evidence, unless the Government wishes to put in a self-serving statement with no opportunity to claim its falsity. Of course Your Honors must know that the prosecutor would never put the testimony of DeLucia before the Kefauver Committee, that petitioner had $300,000 in evidence, if the prosecutor knew that the Court would not permit proof of statements out of Court made by DeLucia that petitioner had not received extortion money. When the record is understood, it will be seen that the Kefauver testimony is not contradicted by the out of court denials because before the Kefauver Committee DeLucia did not say that the $300,000 came from extortion. In his argument to the

jury, the prosecutor said, (547) after he asserted that the $300,000 was the key to the case:

> Mr. Barnett: "On the other hand, if that story is false, as we contend the evidence shows that it is, then Mr. De Lucia, *having explained that the source of the funds in 1948, 1949 and 1950 came from that $300,000*, then his explanation is false, the income must have been derived from taxable income, that is, the disbursements in 1948, 1949 and 1950 must have been derived from taxable income received by him during those years." (Italics added)

There was not a scintilla of evidence to show that DeLucia "*explained the source of the funds as coming from that* $300,000." We submit that the Court of Appeals should have been able to see this deficiency in the proof. Petitioner did not testify, nor did he put on any evidence. The $300,000 was brought into the case by the Government. The charge against Mr. Bulger and petitioner in Count IV was that they conspired to have Mr. Bulger tell a falsehood concerning the existence of a $300,000 hoard. The jury acquitted. Without a scintilla of evidence to support the conclusion, the Court of Appeals assumed that Mr. Bulger told a false story about the $300,000. The lower courts should have been able to perceive that there were more than two ways of looking at the evidence. The jury, if properly instructed could have found the story told by Mr. Bulger to be false and at the same time find that De Lucia had not been proven guilty by the net worth method as to Count III. This third way raises questions of materiality. The District Court improperly took that question from the jury.

We quote from the Court of Appeals (herein p. 165):

> "There is no showing that Bernstein was aware that Bugler would tell a false story, *as we assume he did.*" (Italics added.)

The charge against DeLucia in Counts I and II was that petitioner made and caused to be made a false statement about the $300,000. Petitioner made no statement at all to the Agents. The evidence failed to show that he caused any statement to be made to the Agents about the $300,000. The District Court found, without any evidence, that De Lucia had made a false statement about the $300,000 and further that petitioner had caused Mr. Bulger to falsify in this regard. The prosecutor prevailed upon the District Judge to hold that petitioner was responsible for that said by Mr. Bernstein concerning $300,000.

We again quote from the closing argument (G. 422):

> Mr. Barnett: Those deposit tickets are credited on the books to Mr. DeLucia's personal account, and who knows where they came from? Who knows? *The only explanation ever given* was that they were previously acquired funds—a ready answer. He has always got that ready answer. "Tell me what you think I have spent, and I will have enough in the attic to cover it. Previously acquired funds." (Italics added.)

If nobody knows where the money came from but DeLucia and he reported to the Parole Officials that the money came from "funds on hand," why not accept that report? "The *only explanation ever given*" is an argument to the effect that DeLucia was obliged to give an explanation. Here again the prosecutor refers to explanations given by Messrs. Bernstein and Bulger. DeLucia made no explanation. We repeat from the above:

> Mr. Barnett: "He (DeLucia) has always got that ready answer. Tell me what you think I have spent and I will have enough in the attic to cover it."

DeLucia never said any time, anywhere, that he had one cent in the attic. DeLucia never said anywhere anytime that if you tell him the expenditures he will have any answer. This argument is based upon that said by Mr. Bulger and possibly something said by Mr. Bernstein. The District Court held that statements by Messrs. Bulger and Bernstein were evidence against DeLucia. After the Court of Appeals perceived that the District Court was wrong on the law, that Honorable Court should have noticed the manner in which the prosecutor made use of the error committed by the District Court. The Court of Appeals failed to realize that that found by that Honorable Court as petitioner's defense was placed in the record by the Government. The defense of DeLucia was a demurrer to the evidence and his motion for acquittal. As we have said, at the request of the Government, the Court gave an instruction (No. 56, p. 578) concerning the exploration of explanations advanced by the defendant "or *his representatives.*"

The prosecutor in his argument referred to the conference of September 1, 1954 (Exhibit 19, p. 406), and referring to the lawyers, said (G. 344):

> Mr. Barnett: "We stand on our story as told to the Kefauver Committee." There were no leads offered at that time. They said, 'We stand on our $300,000. Upset it at your peril. * * *'"

We quote from the record in order to show what we did say about what we would stand upon (424):

> Mr. Smith: I say Mr. DeLucia has testified under oath before the Kefauver Committee, which is an un-

corroborated statement, as far as I am concerned. And I say that is one of the points we would like to clear up.

Mr. Stewart: Suppose we take the position that we stand on that statement? He made it under oath. Why ask him to repeat it. That's our statement and we stand on our books and records. We stand on the returns as made. If you don't choose to believe them, there is nothing we can do about that as of today. Why should we not be permitted to take that position?"

If the District Court had understood the law, as finally announced by the Court of Appeals, the prosecutor would not have been permitted to charge DeLucia with that said by the lawyers in a conference, even if the prosecutor had correctly represented it. There is a great deal of difference between that said by the prosecutor, *i.e.* "We stand on our story as told to the Kefauver Committee" and that actually stated to the Agents by the lawyers. We quote further from the argument (G. 344):

Mr. Barnett: Eugene Bernstein came in and presented a matter of defense. That was when Eugene Bernstein came in and said, "I have a schedule of funds available." That was when he said for the first time, Paul DeLucia had money in the amount of $404,894, not identifying it as extortion money, but, for the first time, claiming that perhaps Paul could have gotten that money. * * *

Here again Your Honors will perceive that the prosecutor improperly charged DeLucia with that said by Mr. Bernstein. Worse still, that so said was designated as petitioner's defense to the charge, as if DeLucia had made such defense at the trial.

The Court of Appeals said herein p. 164:

> "We have carefully read that transcript.* At no time did DeLucia make any statement, sworn or otherwise. Though there are several references to a $300,000 cache, which the Government claims is non-existent, such references can not be considered averments. Actually this meeting amounted to little more than verbal fencing between DeLucia's Attorneys and the Internal Revenue Agents."

The prosecutor confused the issue by claiming that under the law, the Government was entitled to a conviction under two alternative methods of proof. (a) because, among other things, the Government had proved a firm starting point and (b) an expenditures method. We quote from the argument, (551):

> "Mr. Barnett: I think it established a very tight starting point. I think it established an unimpeachable starting point." * * *

The prosecutor did not point to the evidence to establish his starting point. There was no such evidence. If the District Court, when we made our motion for acquittal had required the prosecutor to either point out his starting point or lose his case, some of the confusion might have been avoided. But as Your Honors shall see, the prosecutor claimed to have the benefit of two methods. The Court believed this to be a d[illegible]ct evidence case. (543) We quote further from the argument: (554)

> "Mr. Barnett: There is an alternative method of proof and that is, if you block out all non-taxable receipts, such as we have done in this case, then you, by

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* This is the transcript of the meeting of September 1, 1954 between DeLucia his attorneys and the Revenue Agents. This transcript was put into evidence by the Government and was read to the jury. It has been printed in full. (406)

that alternative method, show the unreported income or, rather, that the expenditures in that year must have been derived from an income producing source rather than from a non-taxable source, or, rather than from cash on hand in the beginning of the period."

We repeat from the above:

"* * * you block out all non-taxable receipts, such as we have done in this case * * *"

Any money received by DeLucia from extortion in 1934 to 1941 constituted non-taxable receipts for 1948, 1949 and 1950. The Government claimed that DeLucia had received about $227,000 in these non-taxable receipts. So the Government had made no effort to block out this $227,000. The Government did try to limit the non-taxable receipts to the $227,000 here, but that effort failed. So it is mere nonsense to say "such as we have done in this case." If the question involved had been properly submitted, it would have been,

What was the amount of non-taxable receipts recieved by DeLucia in the years 1934 to 1941?

This same nonsense was used by the prosecutor in order to deceive the District Court when it came to a discussion of the instructions. (543)

"Mr. Barnett: * * * Mr. Stewart has submitted a number of instructions, three or four, regarding the net worth theory. Your Honor mentioned you read the *Holland* case, which of course is the prime net worth case—

By the Court: *Holland, Freidberg,* and five or six of them.

Mr. Barnett: I wanted to say all the net worth originally stem from what we call the expenditures,

and the case we have here is an expenditures case. As the result there is a little change in terminology necessary, and we have prepared our instructions accordingly."

So it will be observed from the record that if, on the motion for acquittal, the District Court had doubts about proof of a starting point, the Judge may have been misled by the prosecutor, because of his nonsense about two alternatives. By no means did the Government "block out all non-taxable receipts" or "cash on hand". The Court of Appeals said that this was a net worth case. Nothing was said about an alternative method. That Honorable Court failed to notice the harm done by the claim made of an alternative.

At the request of the Government, the Court gave instructions (Nos. 58, p. 579 and 54, p. 578) which authorized the jury to leave out the necessity of a starting point.

"58. The Government relies upon the cash expenditures method of determining correct net income in this case as to the tax evasion charges.

54. In deciding the question of whether the expenditures analysis as proposed by the Government properly reflects the receipt of taxable as opposed to non-taxable funds, you may consider the evidence, if any, of existence of a likely source of taxable income such as a trade or business. If you find such source, you may properly conclude that the net income as shown by the Government's expenditure analysis sprang from that source or sources and is taxable. If there is no satisfactory evidence to identify a likely source of taxable income, you may nonetheless consider *such evidence as they may be* tending to show that the net income determined on an expenditure basis *could not have come from any non-taxable sources,* such as gifts or inheritances, or *cash available from prior years* and

other such items as I have mentioned previously. And if you find that they did not come from non-taxable sources, you may properly conclude that they did come from an undisclosed taxable source." (Italics added.)

This instruction may have been applicable if the Government had "blocked out all non taxable receipts" but the Government had done no such thing. There is no evidence tending to show that the net income could not have come from cash available from prior years. There had been such cash. The Government expert said it amounted to about $227,000. The value of this opinion became the issue. A likely source of unreported income was required. The Government established a source of non-taxable funds on hand. The only real question was the amount. All this talk about gifts or inheritances could only confuse. To permit the prosecutor to escape from the requirements of the net worth method may have resulted first, in the denial of our motion to acquit, second, the verdicts of guilty, third in the judgment. The Court of Appeals has said nothing on the point. That Honorable Court said, (herein p. 170):

> "With this as a starting point the Government went on to show that DeLucia had made large expenditures that far exceeded any reported income. * * * In addition to the proof of expenditures exceeding the reported income the Government also shows a possible likely source of this unreported income."

So Your Honors will observe that the Court of Appeals found a starting point and a likely source and overlooked the fact that the District Judge and the jury may have been deceived by the prosecutor to the extent of believing that all non-taxable receipts had been "blocked out" and consequently no starting point or source was required.

Referring to a check made of the Probate Court of Cook County by Agent Mahon for inheritances, the prosecutor said (G. 418):

> "Mr. Barnett: As far as I know, it is true his parents never came to this country, but his wife's parents did. There is no record of any estate leaving any money to them.
>
> Actually, that is one of those supercautious checks that was conducted by the Agents. They didn't actually have to go and check a record like that. I mean, they were not required to under the technical provisions of the law.
>
> For why? Because of this. *The only explanation that has ever been given* as to where those *moneys* came from that were expended in 1948, 1949 and '50 was that *there was* $300,000 *in a box, and Mr. Bernstein had submitted to Mr. Joseph B. King an analysis of funds available, where Mr. DeLucia got his money.*" (Italics added.)

The prosecutor here told the jury that the Government needed to do nothing but to show that the explanation was false. That this situation made it unnecessary for the Government to prove either a starting point or a likely source. Also that this explanation by Mr. Bernstein made it unnecessary for the Government to show by evidence that the expenditures in 1948, 1949 and 1950 came from non-taxable funds. Your Honors must know now from the record that the prosecutor had no evidence upon which to claim that DeLucia had made this explanation. In view of the fact that DeLucia had made no explanation and was not bound by that said by others, the prosecutor had no right to shift the burden of proof to petitioner. The Court refused instructions tendered by DeLucia and intended to embrace the theory of petitioner. (No. 157, p. 607; No. 165, p. 610; No. 166, p. 611; No. 167, p. 611; No. 168, p. 611;

No. 170, p. 612) The theory of petitioner was that under the circumstances of this case the Government was obliged to establish a starting point. The argument and instructions to the contrary were inapplicable, because vital elements of any alternative method were missing. In a net worth case, there must be both a starting point and a likely source. In the case at bar, the Government had neither. Instructions and argument on an alternative method only confused the real issue. The Court refused an instruction (No. 199, p. 621) tendered by DeLucia including:

> "If the testimony of Joseph Bulger about the three hundred thousand dollars was on a matter immaterial, an important element of this case is absent."

The Court of Appeals held that (herein p. 168):

> "As DeLucia's complaint concerning instructions relates solely to Counts I and II of the indictment what we have heretofore held dispenses with necessity for any comment thereon."

We trust that Your Honors will perceive that if it be error to confuse the jury with talk about an alternative method dispensing with starting point and source the error affected Count III. The Court at the request of the Government gave an instruction (No. 59, p. 579) from which we quote:

> "59. * * * You will see, therefore, that there are two types of charges here. You will note that Paul DeLucia is a defendant and is charged in all four of the counts, and that Joseph Imburgio Bulger is a defendant and is charged only in the fourth count. In the following instructions, both types of charges will be defined and covered and the law with respect to the charges given to you."

There were really three types, but when the Court said two, the jury no doubt understood one type to be conspiracy and the other income tax, lumping Counts I, II and III into one type. One instruction (No. 81, p. 584) refers to Count III specifically. We quote:

> "* * * which is identical to the section of the law referred to in the first two counts * * *"

If your Honors again examine No. 94, p. 586 above set out it will be observed that it deals with "the intent to evade" in all counts referred to in No. 90, p. 586, which mentions Counts I, II and III as concerning evasion.

We copy from our brief (p. 44) in the Court of Appeals.

XIII.

It was error for the District Judge to assume that the statements had been made. It was error for the District Judge to hold as a matter of law that the statements were material in the face of a possible finding that the facts contradicted both assumptions.

Sullivan v. *United States*, 178 F. 2nd 723, 725.

Although our main thrust was at Counts I and II, we did say (Our brief p. 50):

> "Your Honors will observe that many of our points are interwoven. The error of the District Court in giving the above instruction can be understood only after all of the evidence has been studied."

We also said in our brief (p. 48).

As said in *Blackman* v. *United States*, 68 F. 2nd 572, 573:

> "The materiality required is not as to any particular issue in the case, but as to the trial as a whole, that is,

*The petition for rehearing and the briefs of counsel have been included in the record certified as a part of this record.

materiality is determined by whether the false testimony was capable of influencing the tribunal on the issue before it;" (citing cases.)

Because of the claim made by the prosecutor that that instruction was intended for guidance only as to Count IV, we respectfully request Your Honors to examine the charge as a whole. There will be found the following (592):

> 113. When men enter into an agreement for an unlawful purpose they become agents for one another and have made a partnership in crime. The act of any one of such parties in furtherance of their common purpose must be considered to be the act of all and all are equally charged with it.

The District Judge may have very well considered the above instruction as applicable to the conspiracy count alone. The question is not what the District Judge or the prosecutor may have understood. What did the jury understand?

> "We respectfully request your Honors to keep the above principle in mind as Your Honors consider our claim of error concerning the refusal of the District Court to allow inspection of the report made by Agent Smith. We have pointed out to Your Honors that DeLucia made no false statements. The instruction assumes that DeLucia made statements when he had made no statements."

The instruction (No. 102, p. 588) is as follows:

> "102. The fourth count of the indictment charges that the defendants, Paul DeLucia and Joseph I. Bulger, conspired to commit an offense against the United States, to wit, to knowingly and wilfully make false statements and representations in a matter within the jurisdiction of the United States Treasury Depart-

ment, Internal Revenue Service, in violation of Sections 2 and 1001 of Title 18, United States Code. You have heard testimony that representations were made on September 1, 1954 before certain officials of the Internal Revenue Service and, further, that the defendant, Bulger, in the company of the defendant, DeLucia's attorney made certain statements concerning the counting of $300,000 before Assistant Regional Counsel Joseph B. King of the Internal Revenue Service. It is for you to determine from all the evidence in the case whether these statements and representations were true or false.

"With respect to whether or not these statements and representations were material or were made in a matter within the jurisdiction of an agency of the United States Government, that is a question for the Court to determine as a matter of law. I have determined that such statements and representations as were made to representatives of the Internal Revenue Service were made in a matter within the jurisdiction of a department and agency of the United States and, further that such statements and representations were material to a matter then under consideration by the Internal Revenue Service. You need not and should not concern yourselves to any further degree with this matter of law. It remains, therefore, for you, ladies and gentlemen of the jury, to concern yourselves solely with the question of whether such statements and representations as were made to the officials of the Internal Revenue Service were true or false and whether the defendants, DeLucia and Bulger, conspired together for the purpose of making statements and representations which they knew to be false."

If Your Honors should look at the indictment and the verdicts, without looking further at the record, it might be thought that the various Counts involved separate charges. But if the entire record be consulted it will be

seen that the manner in which the case was presented and argued by the prosecutor, and the manner in which the jury was instructed, an issue was made as to the $300,000. The prosecutor said it was the key to the entire case (547). The issue as to the statements made during the investigation may be broken into the following parts. We follow the language of the above instruction:

(a) Were representations made on September, 1954 before certain Revenue Officials?

(b) Did Mr. Bulger make statements concerning $300,000?

(c) Whether these statements were true or false.

(d) Whether these statements and representations were material?

(e) Whether these statements were made in a matter with the jurisdiction of the Revenue Service.

The Court assumed in (a) that statements and representations were made. The Court of Appeals held that there was a total failure of proof that DeLucia made or caused to make (a). When your Honors notice that the prosecutor built his man of straw by saying to the jury over and over again that DeLucia had made (a) the prejudice of the instruction as to the whole case should be obvious.

The Court assumed that (b) was made. The Court of Appeals held that this was hearsay as to Counts I and II. After Your Honors note, from the record, the manner in which the prosecutor used (b) against DeLucia as to all of the Counts, the prejudice created by the instruction as to Count III must also be obvious.

The Court left to the jury the question (c). Your Honors must know that if (a) was not a statement made or caused by DeLucia, the jury should never reach the question of whether that said by the lawyers was true or false.

The Court took (d) from the jury. This was clearly error, not only as to Count IV, Counts I and II, but as to Count III. In the prosecution under Count III if the Government proved no starting point and the figures submitted by the experts were worthless, it would not matter what statements had been made, or whether they were true or false. The statements could be material only if the Government had proved a case, or if the statements contributed to the proof of the charge. If the statements were true, the proof failed. So the statements wouldn't be material, as far as the prosecution is concerned, unless they were false. The prosecutor staked his entire case on the question as to whether they were false. The Judge instructed that the statements were material, true or false. This assumption was no doubt confusing as to all counts.

The Court took (e) from the jury. The Revenue Service would have had no jurisdiction in the absence of an attempt to evade taxes. A lawyer might understand that the Revenue Service had the power to investigate an innocent taxpayer, but the problem presented, is—what did the jury understand,—especially in view of the argument of the prosecutor and the instructions. No doubt the jury believed that the statements had been made in official hearings and they bore the same significance as if they had been made by DeLucia as his defense in the trial. The prosecutor certainly took that position in argument. This instruction also, together with others given, fortified the

claim of the prosecutor that the burden shifted to DeLucia and that petitioner was obliged to make a statement in the investigation in order to furnish the Agents with leads. As we pointed out to the District Court (658) the error of giving this instruction (No. 102, p. 588) affected the entire case and gave reasons for the existence of error committed by the refusal of the Court to allow us to inspect the statements including the Report signed by Agent Smith. We quote (658 to 660):

Mr. Stewart: "With all due respect, your Honor by this instruction took from the jury the following contested issues:

(a) Whether any statement at all was made by DeLucia to the Revenue Service.

(1) On September 1, 1954 DeLucia kept his mouth shut. His lawyers made no statement of fact, they merely sought information.

(2) On November 19, 1957 DeLucia was not present. There is no legal evidence in the record that DeLucia had anything to do with that said by Joe Bulger. There is evidence that Joe Bulger told the Grand Jury that DeLucia asked him to appear and testify before the Revenue Service, but that was hearsay as to DeLucia.

(b) The indictment alleges that the statements were not only false, but were material and within the jurisdiction of the Revenue Service. Your Honor decided such questions and deprived DeLucia of a jury trial on these two vital elements.

Now we respectfully ask—how did your Honor arrive at such conclusions? Did your Honor examine the report made by Agent Smith and others to determine what action, if any, was taken by the Revenue Service on the statements. If so, your Honor made use of evidence not available to DeLucia.

(1) What may have been material is a mixed question of fact and law.

Your Honor had no right to take this issue from the jury.

(2) The materiality or lack thereof of the statements would depend upon what influence, if any, the statements had on the Service. The jury could know nothing of this without the report denied to us.

(3) Even if Your Honor had a right (which we do not concede) to decide this question of materiality as a matter of law—DeLucia had a right to also examine the evidence upon which Your Honor based this conclusion. We have been denied a hearing on this subject. The contents of the report denied us can not be buried in a sealed envelope, it must have been used. If your Honor did not use the report, then your Honor ignored important evidence. Now if your Honor will again examine *Jencks* v. *United States,* 353 U.S. 657 it will be seen that we were entitled to have the report made by Revenue Agent Smith. In fact the Government should have put the report into evidence as a part of its case in order to show the materiality, or lack thereof, of the statements. Your Honor relieved the Government inadvertently by assuming the burden and deciding for the Government as a matter of law. See *Bergman* v. *United States,* 253 F. 2d 933."

In February 1956, Agent Smith (298) called at the home of DeLucia and asked him how much money he had paid as attorneys fees in the extortion trial. DeLucia stated that he had paid $25,000 into a common defense fund. That is all the prosecutor asked about on direct examination. The prosecutor had not yet offered into evidence the transcript (406) of the conference where the witness Agent Smith had presided as Group Supervisor. We quote (299):

> By Mr. Stewart: Your Honor, I would like to cross examine Mr. Smith. The record will show that he was one of the agents present on September 1, 1954. As a matter of fact, he was in charge when an interview was had in his office and the Government has al-

leged that that interview was one of the overt acts. Now, I want to obtain the view of your Honor as to whether or not that would be cross examination now, or at such time as the Government puts in that overt act.

By the Court: I am not familiar with what you mean by an "overt act."

(To Mr. Barnett): I assume you are going to put in the entire case?

Mr. Barnett: We are going to put in the entire case.

By the Court: Then you may reserve your cross examination.

By Mr. Stewart: I think I prefer to do that. * * *

Mr. Barnett: (300) As I see it right now, I have finished my direct examination. There is nothing about the overt act, as yet. If there is nothing about the overt act, this witness, at this point, would be beyond the scope, on that particular point.

Mr. Stewart: That is the reason I spoke to your Honor about it. I recognize that rule of law and I would rather cross examine him at the time when we have before the Court and the jury the transcript of what was said in his presence.

By the Court: Let us go into my chambers and I will discuss it with you.

After a discussion of the meaning of overt act, it appeared that the prosecutor intended to offer later in the case, the transcript (406) to prove one of the overt acts. The conference of September 1, 1954 (406) is also alleged in Counts I and II in reference to false statements. Then counsel requested inspection of the report made by Agent Smith relative to the meeting shown in the transcript (406):

By Mr. Barnett: "I will turn over to the defendants the report that Mr. Smith rendered to the events to which he testified.

Mr. Stewart: I think it ought to be broader than that, in order to save time, your Honor. He is a witness to the overt act, and we would like to have them in advance so that we can be familiar with them. The law entitles us to that, your Honor. You will remember in the *Jencks* case, the Supreme Court said that it is the duty of the prosecutor to do justice—

By the Court: Once he takes the stand, I think they are entitled not only to what he testified to, but anything that might have a tendency to impeach him, and any other statement, I think they would be entitled to it.

Mr. Barnett: As I understand, the motion is made under the Jencks law, they are entitled to a statement, any written statement of the witness, touching upon the matters to which he has testified.

The Court: It doesn't say that.

Mr. Barnett: I am talking about Section 3500 of this Code, which is a codification of the *Jencks* case.

The Court: Not just what he testified to, but any witness who once submits himself to the processes of the court, the defense becomes entitled to a complete statement.

Mr. Barnett: The complete statement, yes, your Honor, but not every report that the man has ever written.

The Court: No. But I mean about this case—read the section. * * * (306) He has a right to look at it. If it has nothing to do with it, they have no right to look at it.

Mr. Stewart: The *Jencks* case goes still further. It is the job of the defense counsel to determine what has value or does not have value, and it is not the job of the judge or the prosecutor, and we must see the statement before we can make up our mind what part we want to use. * * *

Mr. Barnett: May I correct something Mr. Stewart has said? He says by rights the defendants have a right to go through our files and determine what they can use.

The Court: I disagree with that.

Mr. Barnett: That is the reason Section 3500 was put on our books.

The Court: I think I have discretionary power to determine which part of the statement they are entitled to see to help them present their defense properly and legally. Nothing that has no reference or bearing upon the issues.

The District Judge then examined the report during recess and after further argument held that it could be of no value to petitioner and refused to permit counsel for the defense to see the report. We quote from the record (434):

Mr. Stewart: "May we have all of the documents that Mr. Barnett identified in your chambers?

The Court: No; just the last letter.*

The others cannot have any possible bearing and are strictly speculative, office communications, not about this matter but about every phase of the case and have no bearing on the situation.

Mr. Stewart: May I say this, Judge, with all due respect, I believe Your Honor is making a mistake in deciding whether they are of any value to us and I wanted the record to show our objection. * * *

The Court: I said I would like to preserve your record for you and all the others, too, to the Court's absolute satisfaction that it may be reviewed. * * *

Mr. Stewart: Right in that connection, I think it might be well for me to say, for the purpose of the record, that our position should be just a little bit stronger now since more testimony has developed. I

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*This letter dated February 28, 1956 has been copied into the record. (314) It refers only to the conversation had between Agent Smith and DeLucia in 1956 relative to Attorney fees in the extortion trial. The defense also received a memorandum, dated March 15, 1957, from Agent Smith to Agent Mahon about the same conversation with D[illegible]. This memorandum is also printed in the record. (438)

mean, it is stronger than it was when we were in chambers because there is still an additional reason why we should have that report.

The playlet* that we put on here this morning with reference to what happened up in the conference where Mr. Smith was present and Mr. Stonesifer and Mr. Scholz representing the Government,—Your Honor could see from that that we were told that the purpose of calling us in was so that they could complete their investigation and make their report. * * *

If we can show by their report and the surrounding circumstances that there was no chance to influence the action because the action was based upon what they investigated and what they found—you see, there are a great deal many more things involved here than just a question of trying to impeach a witness. We are trying to get at the facts.

Now if it is a fact that this case was closed out and recommended not for prosecution, that is a fact which I think we are entitled to, and we shouldn't be left just fishing for it."

As we have said, Agent Smith was called as a witness before the prosecutor offered the transcript (406). Not having seen the report denied to us we can not say, but Your Honors might know now from the Report whether Agent Stonesifer joined in the Report or refused to join. If the Report does not show the fact this would have been proper cross examination of Agent Stonesifer who identified the transcript (Exhibit 198, p. 406) for the prosecutor in order that it be put in evidence (393). During the discussion, referring to the Report we said (436):

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* The transcript (406) had been read to the jury. The lawyers took the part of the speakers and followed the transcript as a script.

Mr. Stewart: "Now if it is a fact that this case was closed out and recommended not for prosecution, that is a fact which I think we are entitled to, and we shouldn't be left just fishing for it. I could ask Mr. Stonesifer, but supposing he tells me there was no decision made then I am hopelessly at his mercy. I should have what is in the file."

We again quote from the record (390):

By Mr. Stewart: Judge, we want to obtain any statements that this witness Stonesifer has made.

By the Court: Please don't discuss the case with anyone, even with the lawyers, Mr. Witness.

Mr. Stewart: We would like any reports that you have of this witness under the *Jencks* case. This is a new witness to the case, your Honor.

The Court: I am going to read it tomorrow morning. I will get down a little earlier.

Mr. Stewart: That is this witness.

The Court: The report of his statements?

Mr. Stewart: Yes.

The Court: When he finished, I suppose I will read the statement and I will hear you in Chambers on the law, and it will be a matter of policy in all similar situations, I believe.

I think we ought to reach a policy on the law, so we will not be groping in the dark on it. I will make my statement on the record clearly, as clearly as I can make it.

Then we will apply it to this witness and all the witnesses in the same situation.

Mr. Stewart: Very well, sir.

The Court: I think you are better off, Mr. Stewart, waiting until he finishes so that I can determine if they have any statements, what applies to the law, as I see it.

Mr. Stewart: Yes, sir.

Then on the next day of the trial the following took place: (432)

> By The Court: All right. Mr. Barnett, and gentlemen: I have read all of the documents rather thoroughly in re witness Thomas N. Smith, which were discussed briefly and superficially with lawyers in my chambers.
>
> I find that none of these documents, with the exception of the last one, can possibly have any bearing on the witnesses testimony, or have any probative value of any kind, particularly in this situation, so, I am going to identify these according to the regular procedure and have them marked. The Government is authorized not to dispose of them, whatever the order is, but, on the last one, that document, I would prefer that Mr. Stewart take a look at it and if he wants it, I would order the Government to let him look at it, because it has a bearing on his witness.
>
> Mr. Stewart: I want it. I want anything I can get.
>
> The Court: Yes, I say, perhaps you don't. I don't know what the value is.
>
> Mr. Stewart: If I get it and if I don't want to use it, that is another matter.
>
> The Court: That will be the order.

During one of the discussions in chambers, Mr. Barnett identified the papers refused by the Court and sealed them up for delivery to the Court of Appeals. They have been sent to this Honorable Court. We have never seen them.

The Court of Appeals said, (herein p. 167):

> "DeLucia also objects to the refusal of the trial court to direct the submission to him of certain memoranda in the possession of the Government. The Court reviewed the memoranda *in camera* and correctly decided only one had any relation to the testimony of Agent Smith, the author of the memoranda. This one was turned over to the defendants. It is now contended

that such refusal was in violation of the mandate laid down in *Jencks* v. *United States*, 353 U.S. 657.

The District Court was however, following the provisions of 18 U.S.C.A. § 3500 and as we said in *United States* v. *Spanglet*, 2 Cir., ... F. 2nd ..... (quoting)

We agree with the Second Circuit and hold that De Lucia's contention that 18 U.S.C.A. § 3500 is unconstitutional is without merit."

Considering the fact that we have never seen the papers denied us by the District Court we are not in any position to argue from their contents that they would have been of value. In *Jencks* v. *United States*, 353 U.S. 657, 669, Your Honors disapproved of the practice of producing government documents to the trial judge for his determination of relevancy and materiality. We have quoted enough from that said by the District Court to show that if Judge Miner had had only the *Jencks* case as a guide, the Court would have turned the papers over to us. After further argument, the prosecutor convinced the Court that § 3500 has changed the practice. The questions squarely presented by this record may be stated as follows:

(1) If § 3500 had not been enacted would it have been error for the Court to refuse to require delivery of the papers on the ground stated, *i.e.*, that they could have been no value to the defense?

(2) If the answer to (1) is yes, the question arises, was it error to refuse, after application of § 3500?

(3) If it would have been error under the *Jencks* case and not error under § 3500, has Congress the Constitutional power to change the practice, in the light of the *Jencks* case?

(4) In view of the fact that the Government was obliged to prove the materiality of certain statements and the Court took this question from the jury by instruc-

tion after an inspection *in camera* does not this amount to conviction on evidence not heard or seen by petitioner?

When your Honors consider (1) above we call attention to the language of § 3500 from which we quote:

> "* * * the court shall excise the portions of such statement which do not relate to the subject matter of the witness * * *"

This raises the question of what constitutes the "subject matter of the testimony of the witness." Here both witnesses (Stonesifer and Smith.) The prosecutor thought he would play it cute and keep the report from us by controlling the subject matter and limiting the subject to one conversation with DeLucia. The prosecutor put himself in the position of Shylock who did not realize that his contract had not included the blood. If your Honors take a narrow view and agree with the prosecutor, "the subject matter" asked by Agent Smith was one conversation. But even with a narrow view that one conversation was put in evidence with the intent that the entire subject matter would be helpful from the standpoint of the Government. The direct examination of Agent Stonesifer opened up the entire case for the cross-examination.

Your Honors will note that in the transcript Agent Smith has discussed figures including $300,000. Agent Smith fixed a starting point based upon a misconception of the Report of Agent Klein. The Report made by him must have either contained this misconception or showed a discovery of the mistake. We are in the dark, unable to argue on any appeal as to the value of the Report. At the trial level after the verdicts, we requested that the report be spread of record but that was refused. The whole business results from an attempt on the part of Congress to meddle with court procedure contrary to the spirit of our laws as expressed by your Honors.

The answer to the problem appears to be in the answer to this question—

> Were we entitled to cross examine Agent Smith about the conference?

If we were entitled to cross examine him on this subject we were entitled to the Report. The District Court ruled that we could cross examine him only on the subject of his direct examination. We were refused the report as of no value on such narrow view of our right to cross examination. Suppose Your Honors decide to adopt the broader view. The prosecutor had placed the transcript (406) into evidence before the District Court decided to refuse. After the transcript was in evidence, clearly the "subject matter" was not limited to the one conversation. Your Honors have noticed that Agent Smith was quoted as having said many things about the situation in the transcript. When Agent Stonesifer took the stand we confronted him with some of the things mentioned in the transcript. We were handicapped in not having the Report now in question at that time. If the prosecutor had not called Agent Smith to the stand at all a different question may have been presented. If the Report had been delivered to us, we might have recalled Stonsifer for further cross. Your Honors will keep in mind that the transcript (406) contained material wrongfully used by the prosecutor as evidence against DeLucia. Under the circumstances, the District Court should have permitted the defense more latitude in the cross examination of Agent Smith. The Court of Appeals was able to perceive from the record that—(herein p. 164)

> "Actually this meeting amounted to little more than verbal fencing between DeLucia's attorneys and the Internal Revenue agents."

Perhaps if we had been allowed a little more latitude and had had the Report, we would have been able to demonstrate to the jury that this meeting was a mere verbal fencing match. In this connection, we trust that Your Honors will study all that was said by Agent Smith at the conference (406). Keep in mind that the prosecutor by introducing this transcript had the advantage of that said by Agent Smith, without any disadvantage to be brought about by cross examination. We quote (412):

> Agent Smith: "We are not the prosecuting agency in this. We are merely a fact finding agency and if our facts are such, after discussing the matters with your client, if he so desires to discuss it with us, if our findings are such that we see fit to recommend prosecution, or we see fit not to recommend prosecution, that will be based on what we find out from your client."

This alone should link the transcript with the Report.

The lower courts have overruled our contention that the verdicts can not be reconciled. We quoted from the dissenting opinion in *Dunn* v. *United States,* 284 U.S. 390, 406 regarding this quotation to be a good statement of the general rule. Although we informed the Court of Appeals that our quote was from the dissenting opinion by Mr. Justice Butler, the Court of Appeals treated our brief as if we had quoted the dissent as opposed to the majority opinion. Both opinions can be correct as to general rules. As Your Honors know, the decision in any particular case depends upon the evidence and the nature of the charge in separate counts. We again quote the general rule from the dissenting opinion of Mr. Justice Butler in *Dunn* v. *United States,* 284 U.S. 390, 406:

> "I am of opinion that the authorities establish as well settled: (1) that when upon an indictment charging the same offense in different counts, the jury ac-

quits as to one and convicts on the other, defendant is entitled to a new trial; and (2) that when different crimes are charged in separate counts and the jury acquits as to one and convicts on the other, the conviction will be sustained unless, excluding the facts which the jury in reaching its verdict of acquittal necessarily found not proved, it must be held as a matter of law that there is not sufficient evidence to warrant a verdict of guilty; and, where the evidence outside the facts so conclusively negatived by the acquittal on one count is not sufficient to sustain guilt on the other count, defendant is entitled to a new trial."

(1) This is not an indictment charging the same offense in different counts as to III and IV. III is an income tax case; IV is conspiracy.

(2) As to the different crimes (a) excluding the fact the jury found necessary to prove in Count IV, *i.e.*, falsity of $300,000, there is not enough evidence to find guilty as to III. (b) the evidence of the facts negatived by the acquittal is not sufficient to sustain guilt on Counts I, II and III. As to (a) and (b) we contend that there is not enough evidence to convict in III if III were tried alone and all the evidence admissible under IV and not proper under III were eliminated. The Government put its eggs in the basket as to all counts on proof of falsity as to the $300,000. If DeLucia had $300,000 when he came out, the charts can be thrown overboard.

As to (a), the prosecutor built his case on III by pretending that the defense of DeLucia was that the $300,000 was derived from extortion and was used to cover expenditures. By finding DeLucia guilty on III, the jury agreed with the charts, *i.e.*, DeLucia could not have had $300,000, so the defense was based on falsehood. In acquitting on IV, the jury found that it was not satisfied that the $300,000

was false. The Court took the question of materiality from the jury. So therefore the verdicts on III and IV contradict each other.* The Court of Appeals said, (herein p. 172):

> "As we are now concerned only with Count III what had been said is completely dispositive of any vestige of inconsistency."

This no doubt means that there may have been an inconsistency between the guilty on Counts I and II and the not guilty on Count IV. All three counts are based on the same charge as to the making of false statements. So the Court of Appeals has inferred that if there be any inconsistency here, the error of judgment is harmless because the Court of Appeals has reversed as to Counts I and II on other grounds. This attitude overlooks our argument that the inconsistent verdicts were the result of confusion created by the prosecutor. The errors cumulate. It may be possible that if left alone with Count III in a case free from the error already found to exist by the Court of Appeals as to Count I and II, the jury would have acquitted as to Count III. The record may be compared to a human body with cancer in an advanced state. The jury and the District Court were unable to diagnose it as a cancer affliction. The Court of Appeals found the cancer, removed it, and we are expected to believe that the patient has been cured and will live.

On the second day of deliberation both sides tendered an instruction to the jury. Your Honors in *Allen* v. *United States*, 164 U.S. 492 have approved of the practice of in-

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* The Court of Appeals has stated that counsel made a concession in oral argument. We contend that this was the result of a misunderstanding. Cf our petition for rehearing.

structing a jury after retirement. In view of the fact that DeLucia submitted forms of instruction (No. 219, p. 639 and No. 220, p. 640), petitioner is in no position to complain of the action of the Court in giving some kind of an instruction. The objection made in the District Court was to some of the language embodied in the instruction tendered and as finally given by the District Court. The Court of Appeals said, (herein p. 172):

> "The supplemental instruction as thereafter given by the Court has been approved by this Court almost in *haec verba*. *United States* v. *Furling*, 7 Cir., 1952. 194 F. 2d 1.
>
> We therefore, hold that the Court did not err in giving the supplemental instruction."

The supplemental instruction as finally given (637 to 639) is as follows:

> By The Court: "Before I discuss anything with you, I would like to give you one more instruction, if I may. The manner provided by our Constitution and laws for deciding questions of fact in cases as this is, by a verdict of a jury. In a large proportion of cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must, of course be his own verdict—the result of his own convictions and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must come; and there is no reason to suppose, twelve men and women more intelligent, more impartial, or more competent to decide it.
>
> Am I reading it clearly?

With this in view, it is your duty to decide the case if you can conscientiously do so. In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases. In the present case, the burden of proof—the burden is upon the Government to establish the guilt of the defendants beyond a reasonable doubt, and if you are left in doubt as to the guilt of the defendants, or either of them such defendant or defendants, is entitled to the benefit of that doubt and must be acquitted. But, in conferring together you ought to pay proper respect to each other's opinions and reasons, with the disposition to be convinced with each other's argument. And, on the one hand, if much the larger number of you are for a conviction the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the minds of so many men and women equally honest, and equally intelligent, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth, and under the sanction of the same oath. And, on the other hand, if the majority of you are for acquittal the minority should equally ask themselves whether they may not reasonably and ought to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction in the minds of their fellows.

You will again retire to the jury room and continue your deliberations. Now, I am told that you have a question to ask. If, after some more deliberations, in the light of this instruction, you still want to ask the question, I would appreciate it if you would put it in writing and knock on the door again and I will be very happy to consider it.

Thank you very much."

Our objections were detailed and argued in Chambers before the instruction was given (632).

It is true that much of the language used by the District Court was copied by the prosecutor from the *Allen* opinion. The objections we now make were not made, insofar as is shown. Our respectful request is that your Honors consider the language of the instruction in the light of our objections. We submit that the nature of the evidence and the manner of its presentation was such that an argumentative instruction at this point should reverse.

> Mr. Stewart: "In a large portion of cases, absolute certainty cannot be attained or expected." I don't think that expression is necessary at this time because your Honor has already instructed the jury on reasonable doubt and that, as I see it, seems to sort of minimize that and it takes some things away that the defendants are entitled to.
>
> Now, that is one of the objections. I am going to read again from the instruction. "* * * You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must come; and there is no reason to suppose that the case will ever be submitted to twelve persons, twelve men and women more intelligent, more impartial, or more competent to decide it."
>
> Now, I have several objections to that. The jury has nothing to do with the fact that the case must, at some time, be decided. As a matter of fact, there are some cases that are so uncertain and the minds can't meet and there are cases that result in a disagreement which results afterwards in a dismissal of the case by the prosecution. If this is such a case, the jury has nothing to do with that now.
>
> Then, to say 'You are selected in the same manner, and from the same source,' that may not be true. This was a special panel. We may later on get another panel. Suppose in this case, Your Honor, we had been making objections to the source and we had a point

that we made with reference to the fact that his source, the way the Clerk goes at it, with the Jury Commissioner, doesn't get a proper cross-section of the community. This jury may be the kind we have a valid objection to. It has nothing to do with the purpose of the instruction I am going to read again from the instruction":

"and there is no reason to suppose that the case will ever be submitted to twelve persons, twelve men and women more intelligent, more impartial, or more competent to decide it."

That may be true. * * * It is no business of the Court to say that there will never be twelve persons, twelve men and women more intelligent, more impartial or more competent to decide it. There may be something we discover late that we want to raise. It may be that something happened to make someone not impartial. It is not necessary to put that in the instruction.

I will go ahead:

"With this in view, it is your duty to decide the case —"

By the Court: And that is the answer, "if you can conscientiously do so."

Mr. Stewart: That is right, but you don't need the other part. I assume your Honor is going to take this the way it is. I want to make a record.

"In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases."

Now, it can't be one party or the other, in another case. Why talk about another case where the burden may be on the other side? Your Honor has already instructed the jury as to the burden of proof. * * * (635)

635 * * * and then follows the language:

"And on the one hand, if much the larger number of you are for a conviction the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the

minds of so many men and women equally honest, and equally intelligent, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth.

There, of course, that follows the *Allen* case, but, I will say it may be possible somebody on there may be moved by prejudice and doesn't have an equal desire to arrive at the truth.

"and under the sanction of the same oath. And, on the other hand, if the majority of you are for acquittal, the minority should equally ask themselves whether they may not reasonably and ought to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are associated and distrust the weight of sufficiency of that evidence which fails to carry conviction in the minds of their fellows."

If I remember, in the *Allen* case, they don't talk about distrust of evidence. That is another element that is being put in here, where Your Honor is telling them at this late date that there is certain evidence which should be distrusted. You have no way of knowing what the jury might trust or distrust in these deliberations. We get to talking about a lot of things, beyond the scope of the case."

CONCLUSION.

In conclusion we repeat the argument made on behalf of petitioner in support of a motion for new trial. (664 to 666). The argument failed to accomplish its purpose but we repeat it the hope that your Honors will perceive that the principles mentioned should have been given heed.

It must be obvious that this case is an example of persecution. Mr. Barnett, as fair as he would wish to be, is more or less helpless. The orders come from Washington, as was said to the Revenue Agents on September 1, 1954. Mr. Barnett must prosecute, as best he can, regardless of the facts. He must do this or resign. Your Honor, must be drawn into the net which encompasses the prosecution, or your Honor must now assert the independence of the

judiciary vital to our Government. We appreciate that it takes considerable personal courage to render a decision opposed to ideas generated by prejudice. We must rely upon that courage in Your Honor. Without such courage our Government fails. The easy way is to send us to the Court of Appeals. We arrive there with the approval of the verdicts by Your Honor. Of course Your Honor should not approve of these verdicts unless after consulting the conscience of Your Honor you really believe that the verdict is in accordance with the law and is supported by the evidence. Equality before the law is engraved over the temple of the Supreme Court. If we are unable to secure equality before the Trial Judge because the Trial Judge may wait for the higher courts to enforce our rights, this Government of ours is in desperate straits. There is no reason we know of to prevent us from clinging to the hope that the Trial Judge will be just as careful as the Supreme Court to protect the citizen from persecution by the powers of officials.

We request your Honor to hold that the Government had no case, which the officials must surely know. It remains to be seen if this be a Government of men or of laws.

Your Honor should have thrown the case out at the conclusion of the evidence for the Government, but Your Honor did not anticipate that we would rest. Having rested, we trust that we have emphasized and disclosed the weaknesses of the case for the Government. Any one error committed should be sufficient to reverse if Your Honor decided to enter judgment. A combination of the errors should surely reverse. As Your Honor must know by judicial notice of records in this court the plan of the Government is to deprive Mr. DeLucia of citizenship and then deport him. To that end the Government is in need of two convictions. One has been obtained in the New

York case. The Government needs this conviction in order to carry out its plan. We trust that Your Honor will agree that it is important, not only to the defendant, but to our form of government that this conviction be not permitted without due process of law. The responsibility now rests upon Your Honor to make a just decision upon the law and with due process. Such decision can only be contrary to the plan of the Government officials and in favor of the defendant, regardless of any opinion Your Honor may hold concerning the defendant as a person. If this Government is to survive there is not one law for the guilty and another law for the innocent. We must all be equal before the law. When the day comes that the administration of the law depends upon the persons involved, we are all in danger.

We ask that Your Honor not approve of the verdicts and set them aside. If this must mean a new trial we stand ready to meet that when and if it comes. Eventually we hope to see the day when the officials not only perceive that they have no case, but they must realize that we are blessed with courageous trial judges unwilling to surrender conscientious oaths in order to join in a studied plan of persecution. We trust that our confidence in Your Honor is not misplaced. A great deal is at stake in the decision to be made as Your Honor must know.

In this Honorable Court in conclusion, we say that we hope that Your Honors will perceive that there has been a miscarriage of justice. There must be something wrong with a conviction obtained in the manner shown.

Respectfully submitted,

WM. SCOTT STEWART
Counsel for Petitioner.

SUMMARY OF ARGUMENT.

Some preliminary remarks about our hope that Your Honors will see fit to take this case.

The prosecutor distorted his case in order to make it appear to be similar in some respect to the *Holland* case. We distinguish the *Holland* case as to some facts. Of course we rely upon the law there stated insofar as is applicable.

A preliminary statement of the manner in which the prosecutor placed the burden on petitioner and the resulting errors.

Description of the various counts.

Reasons for necessity of understanding all of the charges in view of claim that error found by the Court of Appeals as to Counts I and II should have caused reversal of conviction under Count III.

We show something of the efforts of the prosecutor to demonstrate a starting point. We quote from the testimony of Agent Klein to show that a starting point should not be predicated here.

We explain the manner in which the Ruggaber Report had been compiled to demonstrate that it was based on hearsay. Further that the figures are the result of an arbitrary adjustment made for the purpose of a civil claim in 1945. This Report is the foundation for a table (Exhibit 181, p. 341) compiled by Agent Mahon as an expert to establish a starting point of cash available at the end of 1947 as $48,697.01. The table is worthless as evidence.

In 1946, the Agents realized the danger of lack of evidence to support a claim as made the basis of a 90 day letter that petitioner had obtained about $404,000. So

the Government compromised the claim on the basis that petitioner had obtained about $227,000. Petitioner denied receipt of any money. Then in 1958 in a criminal case without anything but the hearsay report, the Government is permitted to establish that petitioner received $227,000 and no more. There must be something wrong in such use of an Agent's Report.

We quote from the cross-examination of Agent Mahon to show that in making his table he gave no heed to a portion the cross-examination of Agent Ruggaber which caused the Agent to admit that he had no way of knowing what amount of money if any, petitioner had received. The expert said that there had been no such examination. We explain from the evidence the manner in which Agent Ruggaber reduced the availabble funds from about $404,000 to about $227,000. If he had left the first figure stand, the Government would have had no case. $404,000 was enough money to cover expenditures. The manner in which the books were kept and the parole reports rendered is described. We explain the purpose of a preliminary motion wherein the books were introduced. The cross examination of Agent Mahon demonstrates that for the purpose of forming an expert opinion, he twisted the testimony and read into Agent Klein's report an item which was not there and which was important to the assumptions made by him as to a starting point.

We point to evidence put in by the Government which destroys one of the assumptions made by Agent Mahon. When confronted by evidence that petitioner had $90,000 in a year in which Agent Mahon assumed he had nothing, the expert said he disregarded this because it had not been proven that this $90,000 belonged to petitioner. The circumstances proven failed to reveal a likely source of unreported income.

The District Court in an instruction (No. 102, p. 588) given at the request of the Government took important questions of fact from the jury and decided them against petitioner as matters of law.

We quote from the opinion of the Court of Appeals to show error found by that Honorable Court in holding petitioner responsible for things said by others during the investigation. The Court of Appeals held that this error required reversal only as to Counts I and II. We demonstrate that the error also contaminated the conviction under Count III.

We quote from the Court of Appeals as to source of unreported income and demonstrate that the evidence does not support such a finding.

We point to a line of immaterial evidence introduced by the prosecutor and demonstrate the manner in which this evidence was used in argument by the prosecutor. The Government put in evidence that petitioner when called as a witness in various investigations had always denied the receipt of extortion money. There was nothing but hearsay to prove that he did receive the money. The prosecutor, without foundation argued that petitioner told lies when he testified to the negative.

We quote from the opinion of the Court of Appeals and demonstrate that our point about putting in immaterial evidence merely to claim its falsehood was misconceived by that Honorable Court.

We demonstrate from the argument of the prosecutor that he claimed that the defense of petitioner was that said by others. The argument amounted to the erection of a man of straw.

As we proceeded with our argument from point to point, we demonstrated that the unfounded position taken by the prosecutor was fortified by instructions given at the request of the Government. Instructions tendered by petitioner designed to properly inform the jury were refused.

We quote from the opinion of the Court of Appeals as to the books kept by petitioner and assert that that Honorable Court failed to perceive the nature of our objection to the use of the net worth method.

We demonstrate the manner in which the instructions given at the request of the Government concerning books were prejudicial. Also that those tendered by petitioner designed to help the jury concerning the law applicable, were refused.

We demonstrate the manner in which the prosecutor in argument improperly shifted the burden to petitioner by misstating the defense. The defense was of that permitted under a plea of not guilty, a demurrer to the evidence. We point to instructions given at the request of the prosecutor calculated to cast the burden on petitioner.

We quote from that said by the Court at the time of sentence to show that the Court had misconceived the issues and no doubt had been influenced against petitioner by extraneous matters brought to bear by the prosecutor.

We set out an instruction (No. 56, p. 578) given at the request of the Government to tell the jury that explanations given during the investigation by representatives of petitioner could be used against petitioner. This is one of the erroneous views of the law to impel the Court of Appeals to reverse as to Counts I and II. That Honorable Court overlooked the fact that the instruction applied the erroneous rule to all counts.

We quote from the opinion of the Court of Appeals and demonstrate that that Honorable Court failed to perceive the *"defense position"*. The Court of Appeals assumed that the *"defense position"* was as outlined to the jury by the prosecutor. This was a maneuver that many have helped to obtain a conviction without proof of a starting point or a source. This unfounded position was fortified by instructions given at the request of the Government. Partly because of this misconception by the Court of Appeals that Honorable Court found a jury question where none existed.

We quote from the argument of the prosecutor in order to show what he meant by an alternative method, reflected in the instructions given at the request of the Government and demonstrate that such method was inapplicable. Under it the prosecutor claimed that the Government was not obliged to prove a starting point or a source. The Court of Appeals designated this as a net worth case and overlooked the fact that the prosecutor had evaded the requiments of such method. The Court refused instructions tendered by petitioner designed to inform the jury of the necessity of proof of the elements of the net worth method.

We point out the error of Instruction No. 102, p. 588 which took from the jury important questions of fact and determined them against petitioner as matters of law. In doing this, we argue, the Court may have taken into consideration the Report of Agent Smith as the Court inspected this report *in camera*. If so, the Report should have been put into evidence by the Government. At least petitioner should have seen it. Petitioner was convicted on evidence he never heard or saw.

The District Court refused to require the prosecutor to deliver certain statements examined by the Judge *in camera*. The Court of Appeals has held that no error was committed. The questions presented by the record are as follows:

(1) If § 3500 had not been enacted would it have been error for the Court to refuse to require delivery of the papers on the ground stated, *i.e.*, that they could have been of no value to the defense?

(2) If the answer to (1) is yes, the question arises, was it error to refuse, after application of § 3500?

(3) If it would have been error under the *Jencks* case and not error under § 3500, has Congress the Constitutional power to change the practice in the light of the *Jencks* case?

(4) In view of the fact that the Government was obliged to prove the materiality of certain statements and the Court took this question from the jury by instruction after an inspection *in camera* does not this amount to conviction on evidence not heard or seen by petitioner?

We argue that the verdicts were inconsistent. By the not guilty the jury indicated that there was insufficient evidence to establish a vital element necessary in the remaining counts.

We claim that error was committed in the language adopted by the Court at the request of the Government in a supplemental instruction given to the jury after retirement.

Prayer for Writ.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued directed to the United States Court of Appeals for the Seventh Circuit, that the judgment be reversed and that your petitioner may have such other and further relief as to this Honorable Court may seem meet and just.

PAUL DELUCIA

By
WM. SCOTT STEWART
Counsel for Petitioner.

APPENDIX

In the

United States Court of Appeals

For the Seventh Circuit

No. 12399 SEPTEMBER TERM 1958—SEPTEMBER SESSION 1958

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PAUL DELUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 31, 1958

Before DUFFY, *Chief Judge.* HASTINGS and PARKINSON, *Circuit Judges.*

PARKINSON, *Circuit Judge.* Defendant-appellant, hereinafter referred to as DeLucia, was found guilty by a jury on the first three counts of a four count indictment returned and filed on March 4, 1957. The fourth count charged DeLucia and one Joseph Bulger with conspiracy. The jury acquitted both defendants on Count IV.

Counts I and II charged DeLucia with violation of § 7201, Internal Revenue Code of 1954, in that he willfully attempted to evade payment of his income tax for the years 1948 and 1949 by making false statements concerning his income for those years. Count III charged a violation of § 145(b), Internal Revenue Code of 1939, alleging that DeLucia filed a false return for the year 1950.

DeLucia was sentenced to serve three years and to pay a fine of $5,000 as to each count, the sentences to run consecutively. This appeal followed.

DeLucia attacks his conviction on Counts I and II upon the theory that there was a complete failure of proof that he made or caused to be made any false statements concerning his income for the years 1948 and 1949.

The first false statement, according to the Government, was made on September 1, 1954, when DeLucia with two attorneys, a Mr. Bernstein and Mr. Stewart, his present counsel, appeared before Mr. T. N. Smith, Group Supervisor, and Special Agents Stonesifer and Scholz of the Internal Revenue Department. A transcript was made of this meeting and is in the record.

We have carefully read that transcript. At no time did DeLucia make any statement, sworn or otherwise. Though there are several references to a $300,000 cache, which the Government claims is non-existent, such references can not be considered averments. Actually this meeting amounted to little more than verbal fencing between DeLucia's attorneys and the Internal Revenue Agents. It is highly improbable that a layman such as DeLucia would understand half of what transpired. We quote the following relevant portion from the transcript which illustrates the inefficacy of the conference:

> "Mr. Smith: I don't want to be in the position where you gentlemen bring this witness in and you are going to sit here and testify for him.
>
> "Mr. Stewart: He is not bound by what we say here. That goes both ways. Mr. D'Lucia is not bound by what you gentlemen say here either. We are not testifying for him. We are trying to straighten matters out and arrive at some understanding in this conference."

Thus there is a total failure to prove that DeLucia made or caused to be made any false statement on September 1, 1954 as alleged in Counts I and II of the indictment.

The second alleged false statement was supposedly made when Bulger, together with Bernstein, DeLucia's tax attorney, appeared before Revenue Agent King on November 19, 1954 and testified that he had counted $300,010 in the possession of DeLucia shortly prior to the prosecution years. DeLucia was not present when Bulger so testified. DeLucia contends that in the absence of competent evidence that he procured, knew of, or ratified Bulger's testimony it can not be attributed to him for the purpose of sustaining Counts I and II.

The Government in order to establish a connection between Bulger's testimony and DeLucia's intent to defraud relies on two points. The first is that at the Grand Jury hearing on DeLucia Bulger testified that he had given the testimony before King at the request of DeLucia. DeLucia was not present at this hearing. A transcript of this was read into evidence in the trial below. DeLucia's counsel objected to the admission of this evidence in that it was not competent as to DeLucia. With this we agree. This evidence was perfectly proper as to Bulger under Count IV but as to DeLucia under Counts I and II it was nothing more than hearsay.

Therefore, ignoring all that took place at the Grand Jury hearing we turn to the Government's second point. Here it is argued that inasmuch as Bernstein had Power of Attorney to do all things in relation to DeLucia's tax matters that DeLucia could himself do when Bernstein brought Bulger before Agent King it had the same legal import as if DeLucia himself had done so. This argument fails in several respects. There is no showing that Bernstein was aware that Bulger would tell a false story, as we assume he did. Hence Bernstein was not culpable in any manner and there is nothing of an illegal nature that we may import to DeLucia.

Secondly while it is probable DeLucia would have known Bulger's story to be false there is absolutely no competent evidence showing that DeLucia knew Bulger was to testify or had testified before Agent King. While it is true that Bernstein had been DeLucia's tax attorney

for a number of years this does not prove that DeLucia was informed of all that Bernstein did in relation to the former's tax matters. As to whether DeLucia told Bulger what to say and whether he intended that the story should be related to Agent King or at any other time is, from the competent evidence in the record, mere speculation.

The Government cites several cases to sustain its argument that the action of an attorney may be chargeable to the client. However, in the first case cited, *Banks* v. *United States*, 8 Cir., 1953, 204 F. 2d 666, the attorney there did nothing more than relay to the Government agents written answers furnished by his client to specific questions tendered by the agents.

In the second case, *United States* v. *Bender*, 7 Cir., 1955, 218 F. 2d 869, this court merely held that where an attorney submitted an auditor's work sheet to explain discrepancies in his client's tax return, the Government had not obtained the work sheet improperly and it could be admitted in evidence.

In *Gariepy* v. *United States*, 6 Cir., 1955, 220 F. 2d 252, the defendant at the trial identified the income tax return, supposedly submitted by others, as his own. In addition the court charged the jury that it could not find the defendant guilty unless it found beyond a reasonable doubt that he had knowledge of the falsity of the returns filed.

The defendant in the case of *United States* v. *Albanese*, 2 Cir., 1955, 224 F. 2d 879, had admitted that the returns submitted were his and that he had given permission to others to sign them for him.

Therefore, in three out of the four cases there was substantial proof, through admissions, or otherwise, that defendant was aware of the relevant act committed by others in his name. In the *Bender* case, while it was not directly shown that the defendant knew his attorney was submitting the auditor's work sheet, the submission thereof did not constitute the gravamen of the offense complained of, as it does here.

This Court is not now holding that circumstantial evidence could not supply the connection between Bulger's testimony and DeLucia's intent. Such undoubtedly could be done, *Canton* v. *United States*, 8 Cir., 1955, 226 F. 2d 313. What we do say is that where, as here, an attorney acting in good faith offers a witness who gives false testimony before Internal Revenue agents and there is no showing, circumstantial or otherwise, that the client knew that such testimony was given, the attorney's act can not be imputed to the client to constitute willful fraud.

We, therefore, hold that there was a total failure to prove a necessary element of the offense charged in both Count I and Count II; that the evidence is clearly insufficient to support the verdict of guilty as to those two counts; and the District Court erred in denying DeLucia's motion for judgment of acquittal on Counts I and II.

DeLucia next contends that the offense charged in Count III was barred by the six year statute of limitations. The indictment was returned and filed on March 4, 1957 charging in Count III that DeLucia had filed a false and fraudulent return on or about March 5, 1951. Government's Exhibit No. 22 is a photostatic copy of DeLucia's 1950 return. There is on the face of the return a stamp bearing the legend: "Received Mar 5, 1951 Coll. Int. Rev. 1st Dist. Ill. No. 8."

Moreover, when counsel for the Government offered Government's Exhibit No. 22 in evidence pursuant to agreement and stipulation of the parties it was stated to the jury and for the record that it was "filed with the Collector of Internal Revenue in the First District of Illinois on March 5, 1951." DeLucia first raised the question as to whether the date on the stamp was correct on his motion for a new trial. He offered no evidence to prove the date was not affixed when the return was received by the Internal Revenue Department. His objection now is not well taken.

DeLucia also objects to the refusal of the trial court to direct the submission to him of certain memoranda in the possession of the Government. The Court reviewed the

memoranda *in camera* and correctly decided only one had any relation to the testimony of Agent Smith, the author of the memoranda. This one was turned over to the defendants. It is now contended that such refusal was in violation of the mandate laid down in *Jencks* v. *United States*, 1957, 353 U.S. 657.

The District Court was, however, following the provisions of 18 U.S.C.A. § 3500 and as was said in *United States* v. *Spangelet*, 2 Cir., 1958, ... F. 2d .....:

> "However, the defendant argues that the mandate in the *Jencks* case is a constitutional edict and that Sec. 3500, if it narrows the holding of the *Jencks* decision in any regard, is unconstitutional. We cannot agree. As we read the *Jencks* case, its rule is an exercise by the Supreme Court of its supervisory power over the 'administration of criminal justice in the federal courts'. See *McNabb* v. *United States*, 318 U.S. 332, 340-42. We find no indication in *Jencks* that the standards it set forth were constitutionally required. It follows that once Congress has entered the field its determination of proper federal criminal procedure is controlling. We conclude that Sec. 3500 in that it fails to apply the *Jencks* procedure • • • • is not unconstitutional."

We agree with the Second Circuit and hold that DeLucia's contention that 18 U.S.C.A. § 3500 is unconstitutional is without merit.

As DeLucia's complaint concerning instructions relates solely to Counts I and II of the indictment what we have heretofore held dispenses with necessity for any comment thereon.

DeLucia also contends that where he himself kept a set of books and records the District Court erred in permitting use of the net worth method of proof. This would mean that simply because taxpayer has kept a set of books, the veracity of which is in question, the Gov-

ernment is estoppel from going beyond those books to prove their falsity or inaccuracy. This is absurd. *Holland v. United States*, 1954, 348 U.S. 121, 131-132.

DeLucia's main thrust is delivered at the Government's evidence sustaining the net worth method of proof. He claims that the Government not only changed its position from time to time but in failing to prove his net worth at any particular date it left it to the jury to speculate and guess as to his guilt. With this we can not agree.

The Government undertook to prove what assets defendant had on hand at the beginning of 1948 by means of showing his entire preceding financial history. Much of this evidence was admitted by stipulation. The first step was to show what income DeLucia had received from all sources from 1920 to December 31, 1947. The Government then proceeded to introduce evidence of all known expenditures during this same period.

The Government also checked the income tax filing record of DeLucia's wife, Nancy, under both her maiden and married names for all prior years. A check was made of Internal Revenue Gift and Estate tax records, probate records, bank accounts, brokerage houses and insurance company records. As a result of this investigation the Government contended that DeLucia could not have had more than $48,697.01 at the beginning of 1948.

The cash on hand at that date was the central issue in the case, the defense position being that there was at least $300,000 on hand and the Government's position that there was no more than $48,697.01. The jury resolved the issue against DeLucia and we can not say that in doing so the verdict is not adequately supported by the evidence. In *Holland v. United States*, 1954, 348 U.S. 121, 133-134, the Court said:

> "The Government also negatived the possibility of petitioners' accumulating such a sum by checking Mr. Holland's income tax returns as far back as 1913, showing that the income declared in previous

years was insufficient to enable defendants to save any appreciable amount of money. The jury resolved this question of the existence of a cache of cash against the Hollands, and we believe the verdict was fully supported."

With this as a starting point the Government went on to show that DeLucia had made large expenditures that far exceeded any reported income.

It was stipulated at trial that during the years 1948, 1949 and 1950 and until March 1954 DeLucia was on parole as a result of a previous conviction. Parole reports filed by him during the prosecution years were admitted into evidence by stipulation. These reports show personal and farm expenditures in the amounts of $217,107.37 for 1948; $120,933.14 for 1949 and $118,770.76 for 1950. These amounts are in substantial agreement with the expenditures shown on DeLucia's books also in evidence. The defendant's income tax returns for the same years showed no net income and, in fact, reported losses as follows: 1948, $ - 18,944.71; 1949, $ - 2,282.95; 1950, $ - 9,838.82.

In addition to the proof of expenditures exceeding the reported income the Government also shows a possible likely source of this unreported income.

During the period 1944 to March 1954 DeLucia was either imprisoned or on parole and his returns for that period disclosed no income that can not be readily accounted for upon the face of the returns. However, his return for the year 1954, which was the first year he was free of parole, reported $76,512 from "Personal wagering at tracks, etc." His 1955 return reported $86,050.92 from the same source and his 1956 return reported $78,460 from "miscellaneous". We think the jury could very easily have believed that DeLucia simply did not report his income from such illicit activities during the period that he was on parole, but did continue to receive such income out of which he made the large expenditures dur-

ing the years in question. In *United States* v. *Frank*, 3 Cir., 1957, 245 F. 2d 284, 287, the Court said:

> "It was also shown that the defendant on several of his income tax returns had reported a gain from 'sporting enterprises,' an euphemistic term for gambling profits. He did not return any for 1948 and it is suggested that this form of activity was another possible source of income. This point was quite thoroughly developed and the defendant's method of bookkeeping, or lack of bookkeeping, for his sporting enterprises was shown. This was all relevant and its weight for the jury."

We hold that the above evidence, in so far as it relates to Count III, was sufficient for the jury to find that DeLucia had failed to report income during the taxable year 1950.

DeLucia originally asserted in his briefs herein that there was inconsistency between the verdicts of guilty and of not guilty and quoted from the dissenting opinion in *Dunn* v. *United States*, 1932, 284 U.S. 390. However, the majority opinion in that case said on page 393:

> "Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment. *Latham* v. *The Queen*, 5 Best & *Smith* 635, 642, 643. *Selvester* v. *United States*, 170 U.S. 262."

This Court said in *United States* v. *Bazzell*, 7 Cir., 1951, 187 F. 2d 878, 884:

> "As to the argument that the verdict is inconsistent, it will be enough to say that where a defendant is charged by two or more counts in an indictment, consistency between the verdicts on the several counts is not necessary. *Dunn* v. *United States*, 284 U.S. 390, 52 S. Ct. 189, 76 L.Ed. 356; *United States* v. *Denny*, 7 Cir., 165 F. 2d 668; and *United States* v.

Coplon, 2 Cir., 185 F. 2d 629, 633. A verdict of acquittal on one count does not invalidate a verdict of guilty on another count, although the same evidence is offered in support of each. *Garrison* v. *Hunter*, 10 Cir., 149 F. 2d 844, 845. See also *United States* v. *Pandolfi*, 2 Cir., 110 F. 2d 736."

Moreover, counsel for DeLucia conceded in oral argument in this Court, and correctly so, that there is no inconsistency between the verdicts of not guilty on Count IV and of guilty on Count III. As we are now concerned only with Count III what has been said is completely dispositive of any vestige of inconsistency.

DeLucia also contends that the Government switched its positions in regard to the alleged hoard of money that he had. However, with this we cannot agree inasmuch as it appears from the record that the Government has always contended that DeLucia did receive a large sum through extortion and that it has been taken into account in the itemization of DeLucia's income. If anybody is changing positions it is the defendant who has at times denied that he received the money and on other occasions claims by innuendo that this constituted the sum from which he made the various expenditures in the years in question.

Defendant's last objection goes to the supplemental instruction given to the jury on the second day of deliberation. Counsel for both the Government and defendant presented instructions to the Court based on the holding of the United States Supreme Court in *Allen* v. *United States*, 1896, 164 U.S. 492. Defense counsel made certain objections to the version of the *Allen* charge submitted by the Government and the Court acceded to some of these objections and refused others. The supplemental instruction as thereafter given by the Court has been approved by this Court almost *in haec verba*. *United States* v. *Furlong*, 7 Cir., 1952, 194 F. 2d 1.

We, therefore, hold that the Court did not err in giving the supplemental instruction.

The portion of the judgment based upon Counts I and II is reversed and cause remanded with instructions to grant the motion of the defendant for judgment of acquittal thereon.

The portion of the judgment based upon Count III is AFFIRMED.

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 745

PAUL DELUCIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 163–173) is reported at 262 F. 2d 610.

JURISDICTION

The judgment of the Court of Appeals was entered on December 31, 1958 (Pet. 163), and a petition for rehearing was denied on February 5, 1959. The petition for a writ of certiorari was filed on March 3, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict.

2. Whether the District Court erred in the admission of evidence, not objected to by the petitioner, consisting of (*a*) an expert accountant's opinion as to the maximum amount of cash petitioner might have had on hand as of December 31, 1947; and (*b*) the reports of two Treasury agents setting out the results of their investigation into petitioner's tax liability for earlier years.

3. Whether there is a fatal inconsistency between the Court of Appeals' reversal of the convictions on Counts I and II (relating to petitioner's income taxes for 1948 and 1949) and its affirmance of the conviction on Count III (relating to his 1950 income taxes).

4. Whether, after a Government witness had testified only to an admission made to him by petitioner in 1956, the District Court erred in refusing to require the production, for the use of defense counsel in cross-examination, of copies of reports the witness had made to the Government prior to 1956.

5. Whether petitioner's acquittal on Count IV (a conspiracy count) requires reversal of his conviction on Count III (a substantive count).

6. Whether the District Court erred in giving the jury a supplemental instruction.

STATUTE INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this

chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U.S.C. 1952 ed., Sec. 145(b)).

STATEMENT

On March 4, 1957, petitioner was indicted in the United States District Court for the Northern District of Illinois, Eastern Division, on three counts for wilful attempted evasion of his individual income taxes for the years 1948 through 1950, in violation of Section 145(b) of the Internal Revenue Code of 1939. The indictment alleged that petitioner and his wife had received unreported income during those years, resulting in tax deficiencies as follows (AA. 2–5):[1]

Year	*Unreported tax liability*
1948	$75,201.14
1949	17,589.54
1950	35,555.88
Total	$128,346.56

[1] The appellant's appendix in the Court of Appeals, consisting of three volumes with pages numbered 1 to 683, is designated "AA." The Government's appendix in the Court of Appeals, consisting of one volume with pages numbered 1 to 461, is designated "GA."

The indictment also contained a fourth count, in which petitioner and one Bulger were charged with conspiring to make false and fraudulent statements in a matter within the jurisdiction of the United States Treasury Department, in violation of 18 U.S.C., Section 371 (AA. 6–7).

After a jury trial, petitioner was found guilty on the first three counts. Both defendants were acquitted on the conspiracy count (AA. 642). Petitioner was fined $5,000 on each of the counts on which he was convicted, and given three consecutive three-year prison terms (AA. 668). For reasons discussed hereinafter (*infra*, p. 14 and fn. 7), the Court of Appeals reversed petitioner's conviction on the first two counts and affirmed as to Count III. (Pet. 163–173; *United States* v. *DeLucia*, 262 F. 2d 610.)

The evidence to support the verdict may be summarized as follows:

On the 1950 individual income tax return of petitioner there was reported a net loss of $9,838.82, resulting mainly from the operation of his farm (AA. 101–106). The Government's evidence showed that, on the basis of petitioner's receipts and expenditures,[2] his true 1950 income was $61,915.14, on which he owed a tax of $23,754.84 (AA. 528, 540; GA. 461). The great majority of the expenditures were stipulated (*e.g.*, AA. 27–38, 106–114, 276–280), and the others were uncontroverted. The principal issue at the trial was the accuracy of the computation by

[2] On his own books petitioner always computed his income by the expenditures method (AA. 168–169, 183–185).

which the Government had fixed petitioner's maximum undeposited cash on hand as of December 31, 1947, at $48,697.01 (GA. 449).

The Treasury agents made a thorough search of gift tax returns and estate tax returns in the family names of petitioner and his wife, in a quest for evidence of the receipt of non-income funds, but with negative results (AA. 325; GA. 185).

Petitioner entered the United States in 1920, when he was 22 or 23 years old (AA. 88).[3] Petitioner filed no income tax returns for the years 1920 through 1933 (AA. 106–107, 326; GA. 184–185). He did file income tax returns for the years 1934 through 1947, except that he filed no return for the year 1944 (AA. 89). The total income reported by petitioner from 1934 through 1947 was $509,816.58 (AA. 107–113, 326, 377; GA. 449). He had also received certain non-income funds and substantial unreported income during many of those years, as disclosed by previous examinations by Treasury agents. The total of these additional funds was $293,479.80, which comprised (1) $227,781.46 of unreported income received by petitioner during the years 1935 through 1940 as his share of monies extorted from producers and distributors of motion pictures (AA. 116–126; GA. 11, 20–22, 449);[4] and (2) $65,698.34 of other funds re-

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[3] This Court has already had occasion at the present term to deny a petition for certiorari filed by this petitioner in connection with a denaturalization proceeding against him. *Paul DeLucia* v. *United States*, 358 U.S. 836.

[4] Petitioner was given credit for the entire $227,781.46, despite the fact that he had five times denied under oath that he had ever received any extortion money (AA. 443–447, 492,

ceived by petitioner over the years, some of it resulting from technical adjustments to his reported income and the remainder consisting of non-income receipts of funds, such as loans and returns of capital (AA. 353, 354–356; GA. 449). The Government, by adding petitioner's reported income, unreported income, and non-income funds, arrived at a total of $803,296.38 of gross funds available to petitioner over the 14-year period (AA. 357; GA. 449). The grand total of petitioner's proved expenditures over the same period was $757,875.47, which, when subtracted from the gross funds available (after a minor adjustment),[5] resulted in a difference of $48,697.01, which reflected the maximum possible cash petitioner could have had on hand at the beginning of the prosecution years, December 31, 1947 (AA. 357–358; GA. 449).

The Government then proceeded to establish that on the basis of his proved expenditures petitioner had

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498; GA. 29–32, 265, 269) and despite the fact that petitioner had settled the Government's tax claims for those years by paying tax on only half of the $227,781.46 (AA. 127, 150, 154).

In 1944, petitioner and six others were convicted in the United States District Court for the Southern District of New York of conspiracy to extort money. The convictions were affirmed on appeal. *United States* v. *Compagna*, 146 F. 2d 524, certiorari denied, 324 U.S. 867.

[5] During 1934, the first year of the computation, petitioner's proved expenditures exceeded his gross funds available by $3,276.10. Since it was possible that petitioner could have accumulated savings of that amount in earlier years, even though not earning enough income to have been required to file tax returns, the Government, rather than arrive at a negative cash on hand position at the end of 1934, treated the $3,276.10 as having been on hand at the beginning of that year (AA. 357–358; GA. 449, 453).

received the following net income during the prosecution years, as compared with the losses reported on his tax returns (AA. 90–106, 528, 533–540):

Year	Reported Net income	Corrected
1948	$18,944.71 (Loss)	$131,616.63
1949	2,282.95 (Loss)	34,002.89
1950	9,838.82 (Loss)	61,915.14

Between 1937 and 1943, petitioner customarily reported on his tax returns unidentified "Miscellaneous Income" or "Other Income" in amounts ranging between $39,000 and $80,000 per year (AA. 109–111, 123–126, 190). He ceased this practice between 1945 and 1947 (when he was serving a prison sentence on his conviction for conspiracy to extort—*supra*, p. 5, and fn. 4; AA. 491) and between 1948 and 1953, when he was on parole (AA. 88, 512). For the years 1954, 1955 and 1956, petitioner again reported large lump-sum amounts of miscellaneous income, now identified as "Personal wagering at tracks, et cetera" (AA. 512–513). During the years of his incarceration petitioner reported only nominal income (AA. 112–113; GA. 449). During those two years, however, he received a number of visits from a notorious reputed racketeer (who came under an assumed name) and another individual, who was in the coin or slot machine business. Petitioner complained to the reputed racketeer about the manner in which his (petitioner's) interests in coin and slot machines were being handled during his incarceration, and was disturbed about the differences of opinion on that subject between his two visitors (AA. 489–492).

The defense adduced no evidence.

ARGUMENT

1. Petitioner's first points (Pet. 2–5) comprise two challenges to the sufficiency of the evidence: (*a*) the solidity of the "starting point" and (*b*) the showing of a "likely source" of unreported taxable income. The contentions are without merit.

(*a*) The expenditures method used to prove the Government's case here is nothing more than a variation of the net worth method. Both have been approved by this Court. *United States* v. *Johnson,* 319 U.S. 503; *Holland* v. *United States,* 348 U.S. 121. Just as in a net worth case the Government establishes the receipt of taxable income by a comparison between the taxpayer's net worth at the beginning and end of the year, and by adding thereto his other non-deductible expenditures, so in a pure expenditures case the receipt of taxable income is proved by a comparison of cash receipts and expenditures, without regard to whether those expenditures have come to rest in tangible assets at the end of the taxable period. In using either method, of course, it is incumbent on the Government to establish a solid starting point for the computations, in order to foreclose the explanation that what appears to be unreported income may simply reflect the use of cash or other assets on hand at the beginning of the taxable year. Such a starting point was amply proved in the case at bar. In making an exhaustive examination of the records of gift and estate tax returns on file, and the records of banks, the

Treasury agents did what they reasonably could to eliminate the likelihood that petitioner might have had cash on hand resulting from gifts, inheritances, or loans. From petitioner's failure to file income tax returns until 1934, the jury could readily infer that his total net income until that time was not in excess of $30,500 (GA. 453), and that the bulk of his earnings must have been used for living expenses between 1920 and 1933. Beginning with the year 1934, the Government reconstructed petitioner's reported net income from his tax returns, adding to those figures additional unreported income, as determined by earlier examinations made by Treasury agents, and non-income funds received by petitioner. After subtracting the total of his proved expenditures between 1934 and 1947, the Government arrived at a difference of $48,697.01, which represented the maximum amount of cash petitioner could possibly have had on hand as of December 31, 1947, the beginning of the prosecution years (*supra*, pp. 5–6). Petitioner chose not to present any witnesses to challenge this figure. Cf. *Holland* v. *United States*, 348 U.S. 121, 138–139. That the Government did not understate his cash on hand is attested to by petitioner's own books, which disclosed that (1) his total undeposited cash on hand at the end of 1939 (including cash in vault, in pocket, and in transit to a stockbroker) was $20,573.21, compared with the Government's figure of $180,891.32 (AA. 182–183; GA. 449); and (2) that his total undeposited cash on hand at the end of 1943 was no more

than $200, compared with the Government's figure of $155,637.53 (AA. 192, 199; GA. 449). Moreover, petitioner on one occasion told a Treasury agent that while he was in the penitentiary (1945 to 1947) it was necessary for his wife to "live off the farm" (AA. 491, 505).

At the beginning of the trial, the defense was concerned as to whether the prosecution would give petitioner credit for some $404,000 in extortion money which the Government, in earlier civil proceedings, claimed he had received between 1935 and 1940 (*supra*, p. 5, and fn. 4; AA. 141; GA. 21–22, 449). Although petitioner concedes that he "never, at any time, claimed that the money he had spent, or accumulated, came from this extortion money" (Pet. 80), he still advances the argument that the Government should have added the entire $404,000 to his reported income, thus making the assumption that none of the extortion proceeds were included in the $177,000 of unidentified "Other Income" and "Miscellaneous Income" reported by petitioner on his tax returns for the years 1937 through 1940 (*supra*, p. 7; AA. 123–126). Petitioner overlooks the evidence which showed that (1) he has denied under oath on no less than five occasions that he ever received *any* of this extortion money; and (2) in the civil tax proceedings the Government took exactly the same position that it took in the criminal case, i.e., that $177,000 of the $404,000 was reported as income, and the other $227,000 was unreported, but petitioner settled the civil tax claims by paying tax on only half of the $227,000 (*supra*, p. 5 and fn. 4). It should be noted, moreover, that even

on petitioner's theory the additional $177,000 with which he claims he should have been credited as of December 31, 1947, would have been entirely absorbed in the $186,847.18 of unreported income proved for the years 1948 and 1949, leaving intact the $61,915.14 of unreported income proved for 1950, the only year which is before this Court (*supra*, pp. 4, 7).

(*b*) The Government established a "likely source" of unreported taxable income by showing that both before his incarceration and after the expiration of his term of parole (1954) petitioner customarily reported as income vast sums identified only as "Miscellaneous Income," "Other Income," or "Personal wagering at tracks, et cetera," and that during his incarceration he retained his interests in coin and slot machines (*supra*, p. 7). From this evidence, as the Court of Appeals held, the "jury could very easily have believed that [petitioner] simply did not report his income from such illicit activities during the period that he was on parole, but did continue to receive such income out of which he made the large expenditures during the years in question" (Pet. 170–171). Moreover, the burden on the Government is not necessarily to prove a "likely source," but to show that the funds in question arose from current taxable income. *Holland* v. *United States*, 348 U.S. 121, 137–138; *United States* v. *Massei*, 355 U.S. 595. In the case at bar, the Government introduced evidence tending to show that the funds could not have arisen from gifts, loans, or inheritances (*supra*, p. 5).

We submit that the evidence to support the jury's verdict of guilty was sufficient.

2. Petitioner contends (Pet. 3–4) that the District Court erred in the admission of hearsay evidence, consisting of (*a*) the Government's estimate of the amount of cash petitioner could have had on hand at the end of 1947, and (*b*) the reports of two internal revenue agents who had examined his returns for years prior to the prosecution years. This argument, which was not raised in either of the courts below, is plainly without substance.

(*a*) As we have shown (*supra*, pp. 5–6), the Government's estimate of the maximum amount of cash which petitioner could have had on hand at the end of 1947 was based upon solid proof, including an exhaustive analysis of petitioner's income tax return filing history, his receipts of non-taxable funds, and his expenditures. The two agents who computed the figure (both expert accountants) testified at length as to their method of doing so, without objection from petitioner (AA. 324, 351–360, 526, 533–534). The summary chart prepared by them, showing their computations in detail, was received in evidence, and copies of it were distributed to the jurors, all without objection by petitioner (AA. 331, 353; GA. 219–220). It is well settled that charts of this kind, when based upon documents themselves competent and accessible, are admissible. *United States* v. *Kelley*, 105 F. 2d 912, 918 (C.A. 2d); *Graves* v. *United States*, 191 F. 2d 579, 584 (C.A. 10th); *Bell* v. *United States*, 185 F. 2d 302 (C.A. 4th), certiorari denied, 340 U.S. 930; *Gendelman* v. *United States*, 191 F. 2d 993, 996–997 (C.A. 9th), certiorari denied, 342 U.S. 909; Cf. *Holland* v. *United States*, 348 U.S. 121, 127–128.

(b) The investigation reports of Agents Klein and Ruggaber were introduced into evidence not only without objection by defense counsel, but with his full concurrence (GA. 33, 218).[6] True, counsel stated that he was suggesting their admission because he believed "that the case has developed to the point that a correct understanding of the record requires those reports to be in" (GA. 33), but it was counsel himself who allowed that development by permitting Klein to testify as to his investigation, without any objection (AA. 166–174), and by permitting Ruggaber to testify on direct examination as to his investigation, without any suggestion that hearsay evidence was involved (AA. 115–125, 258–263). On cross-examination of Ruggaber, defense counsel attempted to bring out that some of the conclusions in his report were based on hearsay (AA. 129–135), but did not move to strike any of his testimony, and later agreed that the report should be received in evidence (GA. 33). Petitioner's present argument, then, goes to the weight of the evidence rather than its admissibility. But it is settled that when hearsay evidence is "admitted without objection it is to be considered and given its natural probative effect as if it were in law admissible." *Diaz* v. *United States*, 223 U.S. 442, 450, and cases cited.

3. Equally without merit is the argument (Pet. 4) that the Court of Appeals' reversal of petitioner's conviction on the first two counts requires reversal on

[6] Petitioner's counsel objected initially to the admission of these reports, but later withdrew his objection and they were admitted in evidence (AA. 174, GA. 33, 218).

Count III, because "the same error contributed to the conviction on the third count." The first two counts were reversed not because of any weakness in the Government's expenditures case as such, but because the court found no evidence that petitioner himself had made the false statements attributed to him in those counts (Pet. 164, 167).[7] This finding could not possibly apply to Count III, which charged petitioner with having wilfully attempted to evade and defeat his 1950 income taxes by filing a false and fraudulent tax return. It is undisputed that petitioner signed and filed that return (Cf. Pet. 167).

4. Petitioner urges (Pet. 5–6, 142–146) that he was entitled to the production, for use in cross-examining Agent Thomas N. Smith, of reports written by Smith to his superiors in the Internal Revenue Service in 1952, 1954 and 1955 (AA. 311–313, 649). Petitioner relies upon *Jencks* v. *United States*, 353 U.S. 657 and the so-called Jencks statute, 18 U.S.C. Section 3500. The point is plainly without merit. That case and

[7] Prosecution of petitioner for the filing of false and fraudulent tax returns in an attempt to evade his 1948 and 1949 taxes was barred by the statute of limitations. The indictment alleged that with respect to those taxes the petitioner's attempts to evade took the form of later "making and causing to be made false statements and representations" before officials of the Treasury Department (AA. 3, 4). Cf. *United States* v. *Beacon Brass Co.*, 344 U.S. 43. The Court of Appeals found that the alleged false statements were not made by petitioner and could not fairly be attributed to him, but were more in the nature of "verbal fencing" (Pet. 164) between petitioner's representatives (in his presence) and representatives of the Internal Revenue Service.

statute relate solely to reports of a Government witness touching upon his testimony on direct examination. Here Smith testified only (save for three questions relating to his occupation) as to a conversation he had with petitioner on February 2, 1956, wherein petitioner stated that he had paid $25,000 into a common defense fund for the purpose of paying attorney's fees in connection with the extortion case (AA. 298–299). On February 28, 1956, and again on March 13, 1957, Smith prepared memoranda relating to this conversation, both of which were turned over to defense counsel (AA. 313–316, 432–439). All of the other reports and memoranda of Agent Smith relating to this case were written prior to 1956 (AA. 311–313). No argument is needed to demonstrate that writings prepared by Smith prior to 1956 could not have been reports "touching the events and activities as to which [he] testified at the trial." *Jencks* v. *United States,* 353 U.S. at 668.

5. Petitioner contends (Pet. 6) that the verdict of guilty on Count III is inconsistent with the verdict of not guilty on Count IV, the conspiracy count.[*] The short answers to this argument are that (1) there is no requirement that a jury's verdict be consistent (*Dunn* v. *United States,* 284 U.S. 390); and (2) a "conspiracy to commit a crime is a different offense from the crime that is the object

[*] The Court of Appeals stated: "* * * counsel for De Lucia conceded in oral argument in this Court, and correctly so, that there is no inconsistency between the verdicts of not guilty on Count IV and of guilty on Count III" (Pet. 172).

of the conspiracy."* (*American Tobacco Co.* v. *United States,* 328 U.S. 781, 789 and cases cited.)

6. Petitioner's final contention (Pet. 7) is that the District Court erred in giving a supplemental instruction to the jury. The jury deliberated for approximately ten hours on the day the case was submitted (AA. 603, 630–631). At 10 o'clock the next morning the court gave a supplemental charge urging the jury to reach a verdict if they could conscientiously do so (AA. 632, 637–639), and the verdict came in mid-afternoon of that day (AA. 641–642). There was no objection to the giving of a supplemental charge though petitioner did dispute some of the language employed (AA. 632–637). We submit that the charge, which was based upon that given in *Allen* v. *United States,* 164 U.S. 492, 501, was correct. See also *United States* v. *Furlong,* 194 F. 2d 1 (C.A. 7th), certiorari denied, 343 U.S. 950.

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*This is true *a fortiori* in the instant case, where Count III alleges that petitioner wilfully attempted to evade his 1950 income taxes by filing a false and fraudulent return, and Count IV alleges that he and one Bulger conspired to "knowingly and wilfully make false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of * * * the * * * Internal Revenue Service, in violation of Sections 2 and 1001, Title 18 * * *" (AA. 5–6).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
JOSEPH F. GOETTEN,
RICHARD B. BUHRMAN,
Attorneys.

MAY, 1959.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 745

PAUL DE LUCIA,
Petitioner,

v.

UNITED STATES OF AMERICA.

On petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY

to Government's Brief in Opposition

WM. SCOTT STEWART
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McCORMICK & HENDERSON, INC., CHICAGO, ILL.

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REPLY

to Government's Brief in Opposition

May it please the Court:

The Jenck's Case

We respectfully refer Your Honors again to our petition, pp. 136 to 146. It must be understood that the trial Court examined a report *in camera* and decided that it could have no value. We have not seen the report now before Your Honors.

(a) The report was requested in connection with the cross examination of the witness Agent Stonesifer. See our petition p. 141, AA 390.

(b) From the direct testimony of Agent Stonesifer Your Honors will observe that the report became a part of the case. The direct examination of Agent Stonesifer opened up the entire case for cross examination.

(c) The Solicitor General has adopted the tactics of the prosecutor and seeks to confine our demand for the report solely to our desire to cross examine Agent Smith. Such tactics should not prevail, in the light of the record. Please again see our petition, pp. 143-146.

If the Government had not seen fit to obtain continuances* in the matter of the present BRIEF IN OPPOSITION, this petition for certiorari might have been submitted to Your Honors together with others recently argued. (Nos. 435 and 437, *Lev. et al.;* No. 451, *Rosenberg,* No. 491, *Galax Mirror Co. et al.* No. 471, *Palmero,* No. 489, *Pittsburg Plate Glass.*

We respectfully submit that Your Honors should grant certiorari, in the case at bar, in order to include this petition. Each case presents its factual background. The case at bar presents questions not involved in the previous cases—questions not to be evaded in the manner attempted by the Government in the cases heretofore argued.

---

* We made no objection to motions for continuance. Now, after having examined the briefs in the other cases, we conclude that perhaps we should have objected and have made an effort to have all of the cases considered together.

The Value of the Evidence

The Solicitor General erects a man of straw by representing our complaint to have been one of error in admission of evidence p. 12. Our point, raised below by motion for acquittal and decided against petitioner in the Court of Appeals, is that the hearsay evidence has no probative value. After all the Government should be required to prove its case.

We trust that after Your Honors study the record that no amount of advocacy or legal legerdemain can sweep that requirement under the rug.

Respectfully submitted,

WM. SCOTT STEWART
Counsel for petitioner

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FILED
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FURTHER REPLY

to Government's Brief in Opposition

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FURTHER REPLY

to Government's Brief in Opposition

May It Please The Court:

Fearing that our petition for certiorari might have been presented without it, we hurriedly submitted our "Reply to Government's Brief in Opposition". We believed it important that Your Honors be reminded of other cases recently argued. Cases involving the *Jencks* case rule. Since the filing of our Reply we have examined the briefs

in some of those cases and now beg leave to present this further reply, in order to prevail upon Your Honors, if possible, to include the case at bar in the matter of interpretation of the law applicable. As may be expected each case coming to Your Honors presents its own factual background. It is our respectful contention that the Government has been able to defend its position in each of the other cases, because of facts in those cases not present in the case at bar. We submit that the *De Lucia* case presents questions squarely, which questions require an answer, sooner or later, for the guidance of the lower courts. The trial Judge said, after an examination of the withheld document, that if he thought it would do us any good he would order its delivery. The trial Judge undertook to decide upon the value of the withheld document. Please again see our petition for certiorari, pp. 136 to 146. We do not believe that the right of any trial judge to do this has been as squarely presented in any of the other cases argued before Your Honors.

In *Holland* v. *United States,* 348 U.S. 121, 124, Mr. Justice Clark said, concerning previous cases:

> "We have denied certiorari because the cases involved only questions of evidence and, in isolation, presented no important questions of law."

Your Honors will agree no doubt, that cases should not be decided in isolation, especially where other cases are on the docket. The Government Attorneys should not be allowed to divide and conquer if any such motive was present in their requests for continuances in the case at bar. To divide may be good strategy, if it were the duty of the Government Attorneys to win at all costs. But as Your Honors have said in *Jencks,* 353 U.S. 657, 668, quoting from *Berger*:

"For the interest of the United States in a criminal prosecution is not that it shall win a case but that justice shall be done."

In the case at bar important questions have been presented concerning what might constitute justice. A number of cases have been presented and argued before Your Honors involving related questions. We respectfully submit that the case at bar should be included, before Your Honors reach a decision in the previous cases.

We respectfully submit the following observations concerning the previous cases, in support of our contention that the case at bar should be included by Your Honors in the group, before final decision.

Nos. 435-436-437, Harry Lev v. United States.

The record shows that at the time of the trial the prosecutor did not have in his possession the document made the subject of controversy before Your Honors. The case was tried before *Jencks*. After it reached the Court of Appeals the prosecutor submitted an affidavit in that court, including the controversial statement, which statement was submitted to the Court of Appeals *in camera*. The Government before Your Honors has argued that the error, if any (of non production at trial), was harmless under the circumstances of the case. The Government has put the question, in part, as follows, p. 3, Brief on the merits:

> "3. Whether it was error, under *Jencks* v. *United States*, 353 U.S. 657, for the trial court to deny the request of one defendant for production of what proved to be the summary of a Senate investigator's interview with a witness, where the document had not been seen or approved by the witness and was not then in the possession of the prosecution."

"4. Whether it was reversible error to deny the request for production of the Senate investigator's summary where the testimony of the witness was secondary and largely admitted by the defendant making the request; where the testimony of the same witness before the Senate Committee was available to the defense and was used for impeachment purposes; and where the guilt of all the defendants was proved by overwhelming evidence from other sources."

The defendant in the *Lev* case submitted, among others, the following questions, which we copy from the *Lev* Petition for Certiorari, p. 3:

"6. Are not summaries and reports of prior statements made by witnesses to a government investigator available to the defendant under the provisions of Title 18 U.S.C., Section 3500?"

"7. Does Title 18 U.S.C. Section 3500 provide the sole procedure by which such summaries and reports are to be made available to defendants?"

Rubin, a co-defendant in No. 437, submits one of the questions involved as follows:

"(2) Whether the Court of Appeals was correct in designating the trial court's concededly erroneous ruling as 'harmless error' because of the enactment of the supervening statute enacted by Congress (18 U.S.C. Sec. 3500(a)(b)(e)(1)(2)) as an aftermath of the decision of the Supreme Court of the United States in *Jencks* v. *United States* (353 U.S. 657)."

The obvious differences between the *Lev* case and the *De Lucia* case are respectfully pointed up, briefly, as follows: In *De Lucia*

(a) The trial was had after *Jencks* and after § 3500 was enacted.

(b) The withheld document in *De Lucia* was in the possession of the prosecutor, it had been seen and signed, we believe, by the witnesses appearing at the trial.

(c) The document reflected the opinion of an expert witness, Stonesifer, who furnished his opinion before the trial jury concerning an important issue and which opinion, given at the trial, we believe, was contrary to the opinion expressed in the document.*

We respectfully submit that the circumstances of the *Lev* case may not squarely present the following questions; which questions we copy from our Petition for Certiorari, No. 745, in the *De Lucia* case:

(1) If § 3500 had not been enacted would it have been error for the Court to refuse to require delivery of the papers on the ground stated, *i.e.*, that they could have been of no value to the defense?

(2) If the answer to (1) is yes, the question arises, was it error to refuse, after application of § 3500?

(3) If it would have been error under the *Jencks* case and not error under § 3500, has Congress the Constitutional power to change the practice in the light of that decision?

(4) In view of the fact that the Government was obliged to prove the materiality of certain statements and the Court took this question from the jury by instruction, after an inspection *in camera*, does not this amount to conviction on evidence not heard or seen by petitioner?

No. 451, Rosenberg v. United States.

Your Honors limited the grant of certiorari to the following question which we copy from the Government Brief, p. 2:

"Is the rule of this Court in *Jencks* v. *United States*, 1957, 353 U.S. 657, a rule of mere procedure, or does

*We have not seen the document. We conclude from all of the circumstances of the case, including the refusal of the prosecutor to deliver it, that the document does in fact contradict the witness.

it involve a defendant's constitutional rights? May a clear violation of this rule be harmless error? May the conceded error of a trial court in withholding from defense counsel prior statements of principal Government witnesses be excused because a Circuit Court finds that the defense was not hampered in cross-examination of those witnesses? Is it proper for a Circuit Court to determine what use defense counsel might have made of statements erroneously withheld?"

We quote further from the Government Brief, p. 2:

> "As phrased, this question assumes several matters which we dispute, such as a violation of the *Jencks* rule and an alleged conceded error. In our view, the questions presented are as follows:
>
> 1. Whether it was proper for the trial court to examine *in camera* documents produced by the United States Attorney to determine whether they were the kind of documents which should be turned over to the defense under *Jencks* or 18 U.S.C. 3500.
>
> 2. Whether petitioner should have been permitted to examine the statments of government witnesses prior to trial."

In the *De Lucia* case no demand before trial was made. The request for the document was made after the witnesses had taken the stand and had given their direct testimony. The prosecutor and the Trial Judge assumed that the document was the kind of document covered by 18 U.S.C. § 3500 and made use of the authority found by them in the statute, by virtue of § 3500, to deny the request for inspection.

Nos. 489 and 491, Pittsburg Plate Glass Co. v. United States, Galax Mirror Co. v. United States.

The question presented here to Your Honors involves the Grand Jury testimony of a Government witness.

The Attorneys for *Galax*, Brief p. 3, have put the question as follows:

> "Whether the denial of defendants' motion at the trial for production of the relevant grand jury testimony of the principal prosecution witness for purposes of cross examination constituted error?"

The Court of Appeals, 260 F. 2d 397, 402, said:

> "The defendants at no time requested the judge to make a preliminary inspection of the transcript to ascertain whether there was inconsistency. * * * it is now clear that the production of grand jury testimony is not governed by *Jencks*, nor by subsequent legislation, nor 18 U.S.C.A. § 3500, but by the Federal Rules of Criminal procedure 6(e), 18 U.S.C.A. which vests discretion in the trial court. (citing cases) * * * (404) The Court did not exceed the proper limits of the sound discretion vested in it by Rule 6(e)."

The *De Lucia* case did not involve the denial of access to Grand Jury testimony.

No. 471, Palermo v. United States.

We copy the question presented from the Government Brief, p. 1:

> "Whether it was error to refuse to allow defense counsel to inspect and use for cross examination a memorandum written by Government agents who had conferred with a witness for the prosecution, where such memorandum had not been signed by or exhibited to the witness and was not a substantially verbatim, contemporaneous recording of what the witness had said?"

We quote further from the Government Brief, p. 16:

> "Under the statutory procedure, a summary of prior oral statements prepared by the Government Agents, and which has not been approved by the witness, is not a 'statement' which must be produced for cross examination of such witness."

In the *De Luca* case the witnesses for the Government had taken the stand. We infer from the circumstances in evidence that these witnesses had executed the document withheld by the Court.

We respectfully submit the certiorari should be granted in the case at bar, before decision in the previous cases.

We respectfully submit that other questions have been submitted to Your Honors upon which certiorari should be granted, for reasons heretofore stated in our petition.

Respectfully submitted,

WM. SCOTT STEWART,
Attorney for Petitioner.

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FILED
JUN 10 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 745

PAUL DELUCIA

vs.

UNITED STATES OF AMERICA

On petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for Rehearing

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 745

PAUL DELUCIA

vs.

UNITED STATES OF AMERICA

On petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for Rehearing

May It Please The Court:

Your Honors denied certiorari May 25, 1959. No indication was included to show the non-participation of any Justice of this Honorable Court. We telegraphed and wrote the Clerk of our intention to file this Petition for Rehearing, requesting that he withhold mailing a copy of the order of denial, or that he advise, if application for a stay to a Justice was required. The Clerk treated our telegram and letter as a motion for a stay. The Clerk pre-

sented them to Mr. Justice Clark. Mr. Justice Clark denied a stay. Whereupon we moved in the Court of Appeals for a stay, pending the disposition of this Petition for Rehearing. The Government has opposed our motion in the Court of Appeals upon the ground that Mr. Justice Clark previously denied our motion. Our motion for stay is now pending in the Court of Appeals. In the event that the Court of Appeals should refuse to stay its mandate, we have undertaken to advise the Clerk of this Honorable Court. We shall request that this petition be presented to a Justice of this Honorable Court in support of our motion for a stay of further proceedings, pending disposition.

It appears that Mr. Justice Clark has taken part in the consideration which resulted in denial of certiorari.

The record shows that during the term of Mr. Justice Clark as an Assistant Attorney General, DeLucia was prosecuted and convicted in New York. We quote from a footnote in our petition, p. 32:

> "Your Honors will take judicial notice of the record, printed copy on file in this Honorable Court, United *States* v. *Compagna, et al.* (including DeLucia) 146 F. 2d 524. Certiorari Denied, 324 U.S. 867."

Your Honors will note from 324 U.S. 867, that Mr. Justice Clark there appeared as an Assistant Attorney General. In the trial court the Government was represented by a Special Assistant to the Attorney General. That official appeared for the Government in *United States* v. *Compagna*, 146 F. 2nd 524.

In our petition for certiorari in the case at bar, we said, p. 32:

> "Agent Ruggaber (114) prepared his report from the printed transcript of a case in New York where DeLucia had been convicted."

After Compagna was released on parole, the Government sought to put him back in the penitentiary. Judge Underwood, in *Compagna* v. *Hiatt*, 100 F. Supp. 74, discharged Compagna, on the ground that the warrant had been issued arbitrarily. When this finding reached this Honorable Court, 340 U.S. 880, Your Honors noted that Mr. Justice Clark took no part. We assume that Mr. Justice Clark *sua sponte* recognized his duty to disqualify himself.

Concurrent with the procedure against Compagna and during the term of Mr. Justice Clark as Attorney General, a warrant was issued against DeLucia. In *United States ex rel. DeLucia* v. *O'Donovan*, 82 F. Supp. 435, Judge Igoe held that the warrant had been issued arbitrarily. This discharge was affirmed in *United States ex rel DeLucia* v. *O'Donovan, Marshal*, 178 F. 2nd 876. The Government petitioned Your Honors for certiorari. As appears from 340 U.S. 886, this petition was dismissed. Your Honors noted that Mr. Justice Clark took no part. Here again Mr. Justice Clark must have recognized that his previous association with this litigation should prompt him to disqualify himself.

From the various records, of which Your Honors take judicial notice, it will appear that after DeLucia had been granted parole, in the matter of this New York conviction, he became a football in a political maneuver, made by some of the Republicans to smear the Democrats.

Your Honors will find the reports of the Hoffman Committee printed as part of the record in 340 U.S. 886, No. 9788, Court of Appeals 7th Circuit, *United States ex rel DeLucia* v. *O'Donovan*, we quote, p. 107, 110, from the Report made by Congressman Porter Hardy, Jr.:

> "These attempts by the Chicago Tribune to discredit a Democratic administration, based on unsubstantial rumor, may of course inure to the benefit of a

> member or members of the Republican Party whom the Tribune supports. * * * The Chicago Tribune has sought to use this committee to serve its own private political hatreds and ambitions through baseless attacks on various public officials. It is well known as the medium for expressing the venom of its publisher toward any Democrat and the Democratic Party."

The record in the case at bar includes a printed copy of the proceedings of the Hoffman Committee (our petition p. 68). Mr. Justice Clark was included as one of the targets for this smear campaign and appeared as a witness before the Hoffman Committee.

The printed report (Brown cover) of HEARINGS BEFORE A SUB COMMITTEE OF THE COMMITTEE ON EXPENDITURES IN THE EXECUTIVE DEPARTMENTS, HOUSE OF REPRESENTATIVES, EIGHTIETH CONGRESS, SECOND SESSION, CLARE E. HOFFMAN, CHAIRMAN, was put in evidence below and is now before Your Honors. We quote from this report, p. 600:

> "Mr. Clark * * * But you will have to admit to me that there has been a series of stories, particularly in the Chicago papers, that have continually kept this thing sort of snowballing, by saying, 'Clark did this, Tom Clark did that, Clark is involved here, Clark did this.' Always insinuations and a lot of innuendo about Clark."

The prosecution of DeLucia in New York, the effort to put him back in prison for violation of parole, a deportation proceeding and this prosecution for income tax evasion, all constitute an effort on the part of the prosecuting officials to punish and get rid of petitioner. Mr. Justice Clark happened to be the chief law enforcement officer during a portion of this campaign. As is shown by the record before Your Honors much of the foundation for the present prosecution was laid by officials responsible to Mr. Justice Clark, in his then capacity as Attorney General.

Assuming that at this late day Mr. Justice Clark *sua sponte* determines to disqualify himself, Your Honors must then consider where that places the remaining members of this Honorable Court.

As was said by Mr. Justice Black in *In Re Murchison*, 349 U.S. 133, 136:

> "But to perform its high function in the best way 'justice must satisfy the appearance of justice'."

Also please see the comment by Mr. Justice Frankfurter in *Public Utilities Comm'n* v. *Pollak*, 343 U.S. 451, 466.

In view of the fact that this Honorable Court has granted certiorari in a number of cases involving questions raised by *Jencks* v. *United States*, 353 U.S. 657, our hope is that Your Honors will decide to take the case at bar, along with those cases. Mr. Justice Clark, as Your Honors know, dissented in *Jencks*.

We have a right to guess that in conference Mr. Justice Clark has taken a position contrary to that maintained by petitioner. Of course we have no way of knowing the degree of influence exerted by Mr. Justice Clark in conference. If Your Honors permit the denial of certiorari to stand, with the record showing the participation by Mr. Justice Clark, we respectfully submit that such decision will be a mistake, for reasons now apparent. We say this with all due respect to Mr. Justice Clark and assume that his previous connection with the case did not influence his opinion in the case at bar. We assume further that Mr. Justice Clark took part with no thought of his previous connection. The fact remains that Your Honors have denied certiorari with the participation of a Justice who should have disqualified himself. This fact alone should prompt Your Honors to grant a rehearing. Now that this petition has reminded Mr. Justice Clark of his

previous experience with this litigation, we assume that Mr. Justice Clark will request the proper procedure under the circumstances.

The intervening circumstances of substantial and controlling effect are as follows:

1. Our petition for certiorari was filed March 3, 1959.

2. Your Honors granted certiorari in Nos. 435-436-437, *Harry Lev, et al.* v. *United States* on December 8, 1958.

3. While the *Lev* case was pending our petition was on file and not called to the attention of Your Honors, for the reason that the Solicitor General, without objection, obtained continuances in our case.

4. The *Lev* case, and other cases reached the stage of oral argument. Still our case reposed in the office of the Clerk.

5. We examined the briefs filed in these other cases and endeavored to point out to Your Honors in a FURTHER REPLY that our case presents vital questions more squarely than these other cases.

6. Our FURTHER REPLY was filed on the same day that Your Honors denied certiorari in our case. We conclude that Your Honors did not have the benefit of our FURTHER REPLY and respectfully request its consideration in conjunction with this petition for rehearing. For convenience we have reprinted our FURTHER REPLY as an appendix to this petition.

7. We respectfully refer Your Honors to p. 5 of our FURTHER REPLY, where we have copied questions presented from our petition. To phrase them differently, we have presented the following questions.

A.

Whether a trial judge can make a ruling excluding evidence without letting the defendant know what the evidence is?

B.

Whether a trial judge can evaluate and construe a writing without affording the defendant an opportunity to see the writing and present his contentions concerning its admissibility?

Your Honors have granted certiorari since our petition was filed in cases touching upon the same questions. It is our respectful contention that the case at bar presents the questions more clearly. It is our contention that the Government would be unable to evade and defend in the manner shown by the Government briefs in the other cases.

Since the filing of our petition here the Court of Appeals has in *United States* v. *Davis,* 262 F. 2nd 871, 873, cited the case at bar, *United States* v. *DeLucia,* 262 F. 2nd 610, as authority for the proposition that §3500 is not unconstitutional. We submit to Your Honors that the case at bar presents the constitutional question more clearly than any of the cases in which Your Honors granted certiorari.

If Your Honors decide that §3500 is not unconstitutional, no doubt such decision will be based upon the theory that *Jencks* laid down rules of practice, within the field of Congressional power. In anticipation of the application of such theory, permit us to suggest that the case at bar presents the questions involved much better than any of the other cases in which Your Honors granted certiorari. In the case at bar, our petition p. 167, the Court of Appeals said:

"The Court reviewed the memoranda *in camera* and correctly decided * * *."

The Court of Appeals made no further reference and did not include any hint as to what may have been contained in the withheld statement.

(a) In the courts below, the Government did not assert that the reports were privileged against disclosure on grounds of national security, confidential character of the reports, public interest or otherwise.

(b) The District Judge said clearly that if he thought the material would be of any value, he would have turned it over to the defense.

(c) The District Judge gave no description of the withheld matter. Those concerned are required to remain in the dark and trust to the judgment of the Trial Court.

(d) On the motion for new trial we requested that the Trial Court open the sealed envelope and spread the contents of record.

We quote from the transcript of proceedings p. 26, on file here before Your Honors, on June 12, 1958, showing the argument made to the District Court, on our motion for new trial.

> "Mr. Stewart: I am going to say lets not have any of that secret envelope stuff. * * * Give me a chance to argue from it now * * * not just make a guess or tell you what my information is.
>
> "I am making a suggestion. If that is something we shouldn't have had, lets have daylight on it. Lets spread it of record. Let me have a chance to argue that I should have had it."

In our brief submitted to Court of Appeals and certified here as a part of the record before Your Honors, we said, p. 37: (Emphasis added)

> "In the case at bar we are not dealing with to and from office communications concerning any outside witnesses. We would liked to have known if the

Agents were testifying to opinions in which they themselves had no confidence or belief. Agent Smith was not the only agent involved. We were confronted in the trial with opinions expressed by Agent Stönesifer (379) and Agent King (448). The opinions given by other experts, Ruggaber (245), Mahon (323) and Saldana (525) could have been tested, we believe, more intelligently if the material had not been withheld.

"*During our argument on motion for New Trial,* (642) *we requested that the reports withheld from us be opened and spread upon the record.* This request was opposed and refused. Now in this Honorable Court we are handicapped in presenting an argument concerning papers we have not seen. We respectfully suggest that the report made by Agent Smith should have been put in evidence as part of the case for the Government. The indictment charges the making of false statements on a material matter within the jurisdiction of the Revenue Service. It seems to us that the action taken by the Agents one way or another after having heard the statements, should have been germane. The Government having elected to withhold the report made by the Revenue Agents, we respectfully submit, that that strategy alone should have alerted the District Judge that justice required that the defense should have had the benefit of whatever the facts might have revealed. Without benefit of inspection of the withheld material, we can surmise that if the reports were of help to the Government and did not contradict its theory, the prosecutor would have delivered them. The District Court treated the matter as if we were offering the reports in evidence. Questions which may have arisen as to admissibility never arose. * * *

"The question presented in the case at bar is much broader than that considered in *Jencks*. The question here is . . . can the trial judge permit the prosecutor to withhold evidence in his possession which might assist the jury in determining vital issues. * * *

"By the Court: I think I will go as far as to say to you that almost all of the documents, I think all of the documents and particularly the long, long, long letter, were not the result of any investigation by any one agent nor do they apply to any particular act.

"(436) It is a discussion of the entire matter among themselves, a result of his discussions with different agents and their respective conclusions, which is all speculative.

"It is not subject to cross examination, hasn't any probative value, and I couldn't admit it if you had it before me. * * *

"By Mr. Barnett: (United States Attorney): * * * Whether or not the case was closed or not closed at any stage in the proceeding, to my mind has absolutely no relevancy in connection with the case that is here on trial.

* * *

"By the Court: I didn't want to say that because that might intimate that it was or was not in the files.* I didn't want to comment on it, but I agree with you that even if one agent should or did comment or express an opinion that it should or should not be prosecuted criminally, it wouldn't in the least affect this situation nor would it be admissible before the jury.

"By Mr. Barnett: That is our position, your Honor.

By the Court: I would exclude it.

By Mr. Stewart: Then I think your Honor has committed error, with all due respect. I think you have helped us with our record now.

By the Court: That is all right.

By Mr. Stewart: Thank you. * * *"

Your Honors will note from the various opinions rendered in the District Courts and in the various Courts of Appeal, wherein the defense has been denied inspection,

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* Your Honors will note the care taken by the District Judge to keep us in the dark concerning the contents of the withheld papers.

the court has described the withheld material, sufficiently to show that it was fair to withhold the material.

We illustrate with the following:

United States v. Grunewald, 162 F. Supp. 621

Your Honors will note that Judge Herlands withheld certain papers. The District Judge described these papers sufficiently to show to the defense and to all concerned that the decision was fair and was based upon the law applicable.

United States v. Papworth, 156 F. Supp. 842

The District Court said:

> "But the F. B. I. agent's small note book contained much other confidential information, much of which was wholly unrelated to this case. The defendant has no right to examine such material."

As Your Honors will note, the District Court here made a finding that the withheld material was confidential. A review of such finding might be made *in-camera*. Help in the way of argument from the defense lawyer may very well be not required. Your Honors may very well decide in some future case that it is only fair to conclude that a District Court has made a proper decision, subject to review, again *in camera*, by a Court of Appeals. When this conviction was affirmed in *Papworth* v. *United States*, 256 F. 2nd 125, 129, Your Honors will note that Judge Tuttle took pains to describe the withheld material, in order to show that no error had been committed.

United States v. Waldman, 159 F. Supp. 747

The District Court ordered the material to be turned over to the defense and said, p. 749

> "Finally in the 'statement' in question appear certain paragraphs, not purporting to be what the witness told the agent in detail, but which deal with some preliminary matters."

Your Honors will note that Judge Hartshorne gave some description of the withheld material.

Sells v. United States, 262 F. 2nd 815

We quote, p. 824

> "The excised portions do not relate to any issue presented in the trial. Without the excisions, there was the danger of harm to individuals who were not on time, who did not appear as witnesses, and who were in no way connected with the offense charged against Sells. The excisions properly and reasonably protected such individuals and in no way prejudiced the defendant."

Here again Your Honors will note that the Court of Appeals described the excised material, in order to show to the reader of the opinion that the denial had been made upon sufficient ground.

United States v. Palermo, 258 F. 2nd 397, Certiorari granted, 79 S. Ct. 296, No. 471.

We quote, p. 398

> "The trial court denied the request on the ground that the memorandum was not of the character which was required to be produced under the provisions of 18 U. S. C. A. Section 3500."

Your Honors will note that the Court of Appeals described the withheld material sufficiently to demonstrate that no error had been committed.

United States v. Spanglett, 258 F. 2nd 358

The trial court refused to deliver the Grand Jury testimony of a witness, Gaudin. After holding that *Jencks* and §3500 did not require delivery of Grand Jury testimony, the Court said, p. 341

> "However, now that we read Gaudin's grand jury testimony against his extended testimony on trial we do find one inconsistency."

Then, as Your Honors will note, the Court of Appeals proceeded to quote from the withheld Grand Jury testimony, in order to show that no injustice had been done, by reason of the ruling in the trial court.

Anderson v. United States, 262 F. 2nd 764.

Here, after the defendant had obtained all of the statements, the defense insisted that the file contained more. The judge looked through the file and reported that nothing further could be found. Your Honors could very well hold in some future case that it is not unfair to exclude defense counsel from any offer to help look through the files under the circumstances of this case.

United States v. Lew, 258 F. 2nd 9

This is one of the cases in which Your Honors granted certiorari. The case has been argued and is now under consideration. In all probability Your Honors are now working on opinions to be filed. The Court of Appeals found, p. 13, that the withheld summary was a written record made following the interview and is not substantially a verbatim record of the statement of the witness. It was held that the error, if any, in withholding, was harmless, because the withheld statement in a new trial wouldn't come under §3500. We are informed that whether or not this was fair procedure without permitting counsel for the defendant to participate is one of the questions before Your Honors.

United States v. Miller, 248 F. 2nd 163, 165

The withheld statement was, by stipulation, excluded from the record on appeal. The Court said,

> "Since we cannot know that failure to deliver the statement, properly excised, was prejudicial to the defendant, we do not think a new trial should be ordered."

The Court of Appeals said,

> "*Concededly* the statement contains some matter not related to the subject matter of Michel's testimony." (Emphasis added)

Of course if the defendant concedes that some of the material withheld does not relate to the subject matter, there is no need for the Court to set out, or describe, the withheld material.

United States v. Rosenberg, 257 F. 2nd 760

This is one of the cases in which Your Honors granted certiorari. We refer to this case in our FURTHER REPLY. Your Honors will find that Judge Hastie has described the withheld material, in sufficient detail to justify the action of the trial court. Whether or not the lower courts were in error, is a question before Your Honors. Our point is that the lower court judges described the withheld material. In the absence of such description, the practice of sealing up the withheld material amounts to denial of due process. It is our contention that the practice amounts to a Star Chamber proceeding.

In *Hormel* v. *Helvering*, 312 U.S. 552, 557, Mr. Justice Black said:

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them."

Referring to this Honorable Court, Mr. Justice Black said that this Court:

> " * * * has been careful to point out the circumstances justifying the application of the practice in the particular case."

In *Cahill* v. *New York R. Co.*, 351 U.S. 183, 189, Mr. Justice Black dissenting, has collected the authorities for the following:

> " * * * this court has the entire record before it with the power to review the action of that court as well as direct such disposition of the case as that court might have done * * * "

We respectfully suggest that Your Honors direct the Court of Appeals to point out the circumstances justifying the application of the practice of an inspection *in camera*, to include a description of the matter withheld. In fairness, Your Honors could direct that the withheld matter be made available to counsel for petitioner, in order that further argument might be permitted before the Court of Appeals. Argument in which counsel has possession of necessary information. Counsel should not be required to argue while in the dark as to the contents of the withheld

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* Prior to argument before Your Honors in Nos. 435, 436, 437, **Harry Lev v. United States**, Mr. Anthony Bradley Eben, representing Lev, requested permission of the Clerk for leave to inspect the sealed material, in order to be in a position to argue the claimed error. The Clerk refused. In **United States v. Grunewald**, 162 F. Supp. 621, 626 the Court said:

> "'The eight documents will, however, be preserved for possible availability to the Appellate Court. To that end the Court hereby directs the clerk to impound such documents and to keep them intact in a sealed envelope, subject only to the right of the prosecution to have photostatic copies made of said documents under the supervision of the clerk.'"

material. If it happened that the withheld papers were privileged against disclosure on the grounds of national security, confidential character of the reports, public interest, or otherwise, Your Honors might direct that the lower courts so find. But we have no such case here. We trust that upon rehearing, Your Honors will recognize the need of further rules in the interest of fairness. The whole procedure as now conducted must surely offend any sense of justice and be recognized here as contrary to the American way. It reminds one of Star Chamber proceedings. Your Honors are not only expressly empowered by statute (18 U.S.C. § 3771) to prescribe rules of pleading, practice and procedure in the field of criminal law, but Your Honors are also vested with a supervisory authority over the administration of criminal justice in the federal courts. *McNabb* v. *United States*, 318 U.S. 332, 341. Your Honors have expressed sensitive concern with such matters. *Mallory* v. *United States*, 354 U.S. 449, *Benanti* v. *United States*, 355 U.S. 96.

In *Cahill* v. *New York R. Co.*, 351, 183, 184 Your Honors said:

> "We deem our original order erroneous and recall it in the interest of fairness,"

We assume that Your Honors are always interested in fairness. If a defendant is to be deprived of a statement, after inspection by the trial judge *in camera*, it is only fair that the record show in some way, for all to see, that the judge did not abuse his discretion, especially in cases where security is not involved. If *Jencks* is to be regarded as an order for a rule of practice, to be construed with § 3500, there still remains the need of additional guidance, if the application is to be fair, with adequate means of review. The case at bar presents these vital questions.

We were concerned with other points in our petition and neglected the argument now presented. The suggestions herein have been made after examination of the briefs filed in the cases wherein Your Honors have granted certiorari and after consultation with many of the lawyers for petitioners in those cases. In the opinion of some of these lawyers, Your Honors have indicated a division of opinion upon the questions involved. Permit us to respectfully suggest that the case at bar should be included before final decision is made on the other cases. For some of our reasons please see our FURTHER REPLY (Blue cover) now on file in this Honorable Court.

In *Needelman* v. *United States,* 261 F. 2nd 802, decided November 4, 1958, it appears that the petition for rehearing was reached on January 5, 1959. The Court noted, p. 807, that Your Honors had granted certiorari in the cases referred to in our FURTHER REPLY. (*Lev* v. *United States,* Nos. 435, 436, 437 *et al,*) the Court ordered that the parties might show cause why the Court should not await the decision of one or more of those cases by Your Honors, before the Court of Appeals rules on the petition for rehearing.

If by the grant of certiorari we are permitted to brief this matter of fairness in practice, we hope to be able to contribute to the continuance of the effort of Your Honors to see that justice is done according to law. In *Cone* v. *West Virginia Paper Co.,* 330 U.S. 212, 215, Your Honors noted that in three cases certiorari had been granted to consider a point, but Your Honors failed to reach the point, because of the nature of the cases presented. Unless we are granted a rehearing it may be that the same thing will

happen here. Your Honors have granted certiorari in a number of cases in which questions squarely presented in the case at bar may never be reached, because of the circumstances of those cases.

Your Honors must know that *Jencks* and § 3500 introduced a novel situation. In *Jencks* Your Honors were concerned with an effort to be fair. Your Honors must know that any change in rules must be tested by experience, with the help of lawyers engaged in operating under the rules. With all due respect, we seek the opportunity to offer our suggestions. The case at bar presents a record upon which such suggestions can be founded.

A few days before the brief for the Government was due Mr. William A. Barnett, the Assistant District Attorney who had tried the case and who had argued it in the Court of Appeals, asked us if we had any objection to a thirty day continuance, in the matter of the Government brief in opposition here. We said no. Later we received notice from the Clerk that the extension had been granted. Then, as the time for filing aproached under the extension, Mr. Barnett again asked if we had any objection to a further extension. We said no. In a few days we received another notice from the Clerk to the effect that this second extension had been granted. There has been no indication that these motions for extension had ever been called to the attention of this Honorable Court or to any Justice thereof.

At the time of our consents we did not know of the granting of certiorari by Your Honors in Nos. 435, 436, 437, *Harry Lev* v. *United States* and other cases mentioned in our FURTHER REPLY. If we had known of these other cases we would have objected or in some manner called the attention of Your Honors to the fact that the case at bar included questions similar to those upon which certiorari

had been granted. Now, at this late day, we have made an examination of the Rules. As Your Honors know, Rule 24 provides that the Clerk may enlarge the time under the provisions of paragraph 5 of Rule 34. If we understand paragraph 5, the Clerk is authorized to grant but one extension, agreed upon, provided that the Clerk is of a certain opinion. We quote the last sentence of paragraph 5:

> "All other requests for extension of time for filing briefs shall be referred to the court or a justice thereof."

We respectfully submit that when the Solicitor General applied to the Clerk for the second continuance the Clerk had exhausted his jurisdiction and power. Therefore the Clerk should have referred the application to this Honorable Court or a Justice. In such event, Your Honors, knowing that certiorari had been granted in the other cases, may have denied the application for further extension, or the extension may have been granted and in such event Your Honors may have taken our case with the other cases.

By letter, we submitted our construction of the Rules to the Clerk and have received reply as follows:

> "In checking the records and files in this case we find that there was no irregularity in according the government two extensions of time to file the brief in opposition to the petition inasmuch as it appears that you acquiesced in the extension."

Evidently the Clerk has construed the Rules to give him authority to grant any number of extensions, if there be acquiescence. Even if the Clerk has correctly construed the Rules, it must surely be that Your Honors have jurisdiction to review the matter and to determine if the Clerk was warranted in forming an opinion that the extension, (Rule 35, ¶ 5)

> "* * * would not prejudicially delay the disposition of causes not set for argument or impede the progress of the argument calendar * * *"

Surely there must be implied in the Rules a provision that if the Clerk has reason to believe that the requested extension will have the effect of dividing cases, which belong together, to the prejudice of a party, the facts, including the fact that certiorari had been granted in like cases, should be called to the attention of this Honorable Court, or a Justice thereof.

We seek to lock the barn after the horse has been stolen, we know, but if we understand the function of a petition for rehearing, it includes matters such as this. As Your Honors said in *Jencks* v. *United States*, 353 U.S. 657, 668:

> "For the interest of the United States in a criminal prosecution '* * * is not that it shall win a case, but that justice shall be done * * *' *Berger* v. *United States*, 295 U. S. 78, 88."

We assume that this interest of the United States includes the practice of the Solicitor General, as assisted by the Attorney General and the various District Attorneys.

We refer Your Honors to a group of cases, reported in 260 U.S. 695. After the defendants had been convicted in Illinois, they made an attack upon the indeterminate sentence law. After this Honorable Court granted certiorari in one of these cases and pending decision, this Honorable Court, or a Justice thereof, allowed bail to convicted defendants serving time in the State Penitentiary and grouped the cases, pending the outcome of the main, or first case. We mention this history to show some of our reasons for believing that in the determination of whether certiorari should be granted, it has been the policy of this

Honorable Court to grant the writ, after it had been granted in a previous case involving the same question. This policy evidently was carried out after Your Honors granted certiorari in Nos. 435, 436, 437 *Lev* v. *United States*. Your Honors, more or less as a matter of routine, then granted certiorari in the other cases mentioned in our FURTHER REPLY. If the Solicitor General had not obtained the extensions, our case may have been taken with the others. We trust that Your Honors do not blame us for calling that official to strict account. The Government officials appear to us as demanding a pound of flesh. We point to the contract, as embodied in the Rules. The merchant of Venice agreed to the contract, but Portia was able, at a late day, to find a defense, in her request for strict application of the rules. All of this includes the assumption that judges seek to do justice.

Upon reconsideration we trust that Your Honors will grant certiorari in order that we may be heard further on these important questions, in the light of whatever Your Honors might conclude in the other cases.

Respectfully submitted,

WM. SCOTT STEWART
Counsel for Petitioner

CERTIFICATE OF COUNSEL

Wm. Scott Stewart, counsel for petitioner, hereby certifies that this petition for rehearing is presented in good faith and not for delay. This petition is restricted to the grounds specified in Rule 58.

WM. SCOTT STEWART
Counsel for Petitioner

APPENDIX

FURTHER REPLY

to Government's Brief in Opposition

May It Please The Court:

Fearing that our petition for certiorari might have been presented without it, we hurriedly submitted our "Reply to Government's Brief in Opposition". We believed it important that Your Honors be reminded of other cases recently argued. Cases involving the *Jencks* case rule. Since the filing of our Reply we have examined the briefs in some of those cases and now beg leave to present this further reply, in order to prevail upon Your Honors, if possible, to include the case at bar in the matter of interpretation of the law applicable. As may be expected each case coming to Your Honors presents its own factual background. It is our respectful contention that the Government has been able to defend its position in each of the other cases, because of facts in those cases not present in the case at bar. We submit that the *De Lucia* case presents questions squarely, which questions require an answer, sooner or later, for the guidance of the lower courts. The trial Judge said, after an examination of the withheld document, that if he thought it would do us any good he would order its delivery. The trial Judge undertook to decide upon the value of the withheld document. Please again see our petition for certiorari, pp. 136 to 146. We do not believe that the right of any trial judge to do this has been as squarely presented in any of the other cases argued before Your Honors.

In *Holland* v. *United States*, 348 U.S. 121, 124, Mr. Justice Clark said, concerning previous cases:

> "We have denied certiorari because the cases involved only questions of evidence and, in isolation, presented no important questions of law."

Your Honors will agree no doubt, that cases should not be decided in isolation, especially where other cases are on the docket. The Government Attorneys should not be allowed to divide and conquer if any such motive was present in their requests for continuances in the case at bar. To divide may be good strategy, if it were the duty of the Government Attorneys to win at all costs. But as Your Honors have said in *Jencks*, 353 U.S. 657, 668, quoting from *Berger*:

> "For the interest of the United States in a criminal prosecution is not that it shall win a case but that justice shall be done."

In the case at bar important questions have been presented concerning what might constitute justice. A number of cases have been presented and argued before Your Honors involving related questions. We respectfully submit that the case at bar should be included, before Your Honors reach a decision in the previous cases.

We respectfully submit the following observations concerning the previous cases, in support of our contention that the case at bar should be included by Your Honors in the group, before final decision.

Nos. 435-436-437, Harry Lev v. United States.

The record shows that at the time of the trial the prosecutor did not have in his possession the document made the subject of controversy before Your Honors. The case was tried before *Jencks*. After it reached the Court

of Appeals the prosecutor submitted an affidavit in that court, including the controversial statement, which statement was submitted to the Court of Appeals *in camera*. The Government before Your Honors has argued that the error, if any (of non production at trial), was harmless under the circumstances of the case. The Government has put the question, in part, as follows, p. 3, Brief on the merits:

> "3. Whether it was error, under *Jencks* v. *United States*, 353 U.S. 657, for the trial court to deny the request of one defendant for production of what proved to be the summary of a Senate investigator's interview with a witness, where the document had not been seen or approved by the witness and was not then in the possession of the prosecution."
>
> "4. Whether it was reversible error to deny the request for production of the Senate investigator's summary where the testimony of the witness was secondary and largely admitted by the defendant making the request; where the testimony of the same witness before the Senate Committee was available to the defense and was used for impeachment purposes; and where the guilt of all the defendants was proved by overwhelming evidence from other sources."

The defendant in the *Lev* case submitted, among others, the following questions, which we copy from the *Lev* Petition for Certiorari, p. 3:

> "6. Are not summaries and reports of prior statements made by witnesses to a government investigator available to the defendant under the provisions of Title 18 U.S.C., Section 3500?"
>
> "7. Does Title 18 U.S.C. Section 3500 provide the sole procedure by which such summaries and reports are to be made available to defendants?"

Rubin, a co-defendant in No. 437, submits one of the questions involved as follows:

"(2) Whether the Court of Appeals was correct in designating the trial court's concededly erroneous ruling as 'harmless error' because of the enactment of the supervening statute enacted by Congress (18 U.S.C. Sec. 3500(a)(b)(e)(1)(2)) as an aftermath of the decision of the Supreme Court of the United States in *Jencks* v. *United States* (353 U.S. 657)."

The obvious differences between the *Lev* case and the *De Lucia* case are respectfully pointed up, briefly, as follows: In *De Lucia*

(a) The trial was had after *Jencks* and after § 3500 was enacted.

(b) The withheld document in *De Lucia* was in the possession of the prosecutor, it had been seen and signed, we believe, by the witnesses appearing at the trial.

(c) The document reflected the opinion of an expert witness, Stonesifer, who furnished his opinion before the trial jury concerning an important issue and which opinion, given at the trial, we believe, was contrary to the opinion expressed in the document.*

We respectfully submit that the circumstances of the *Lev* case may not squarely present the following questions, which questions we copy from our Petition for Certiorari, No. 745, in the *De Lucia* case:

(1) If § 3500 had not been enacted would it have been error for the Court to refuse to require delivery of the papers on the ground stated, *i.e.*, that they could have been of no value to the defense?

(2) If the answer to (1) is yes, the question arises, was it error to refuse, after application of § 3500?

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* We have not seen the document. We conclude from all of the circumstances of the case, including the refusal of the prosecutor to deliver it, that the document does in fact contradict the witness.

(3) If it would have been error under the *Jencks* case and not error under § 3500, has Congress the Constitutional power to change the practice in the light of that decision?

(4) In view of the fact that the Government was obliged to prove the materiality of certain statements and the Court took this question from the jury by instruction, after an inspection *in camera*, does not this amount to conviction on evidence not heard or seen by petitioner?

No. 451, Rosenberg v. United States.

Your Honors limited the grant of certiorari to the following question which we copy from the Government Brief, p. 2:

> "Is the rule of this Court in *Jencks* v. *United States*, 1957, 353 U.S. 657, a rule of mere procedure, or does it involve a defendant's constitutional rights? May a clear violation of this rule be harmless error? May the conceded error of a trial court in withholding from defense counsel prior statements of principal Government witnesses be excused because a Circuit Court finds that the defense was not hampered in cross-examination of those witnesses? Is it proper for a Circuit Court to determine what use defense counsel might have made of statements erroneously withheld?"

We quote further from the Government Brief, p. 2:

> "As phrased, this question assumes several matters which we dispute, such as a violation of the *Jencks* rule and an alleged conceded error. In our view, the questions presented are as follows:
>
> 1. Whether it was proper for the trial court to examine *in camera* documents produced by the United States Attorney to determine whether they were the kind of documents which should be turned over to the defense under *Jencks* or 18 U.S.C. 3500.

2. Whether petitioner should have been permitted to examine the statements of government witnesses prior to trial."

In the *De Lucia* case no demand before trial was made. The request for the document was made after the witnesses had taken the stand and had given their direct testimony. The prosecutor and the Trial Judge assumed that the document was the kind of document covered by 18 U.S.C. § 3500 and made use of the authority found by them in the statute, by virtue of § 3500, to deny the request for inspection.

Nos. 489 and 491, Pittsburgh Plate Glass Co. v. United States, Galax Mirror Co. v. United States.

The question presented here to Your Honors involves the Grand Jury testimony of a Government witness. The Attorneys for *Galax*, Brief p. 3, have put the question as follows:

"Whether the denial of defendants' motion at the trial for production of the relevant grand jury testimony of the principal prosecution witness for purposes of cross examination constituted error?"

The Court of Appeals, 260 F. 2d 397, 402, said:

"The defendants at no time requested the judge to make a preliminary inspection of the transcript to ascertain whether there was inconsistency. • • • it is now clear that the production of grand jury testimony is not governed by *Jencks* nor by subsequent legislation, nor 18 U.S.C.A. § 3500, but by the Federal Rules of Criminal procedure 6(e), 18 U.S.C.A. which vests discretion in the trial court. (citing cases) • • • (404) The Court did not exceed the proper limits of the sound discretion vested in it by Rule 6(e)."

The *De Lucia* case did not involve the denial of access to Grand Jury testimony.

No. 471, Palermo v. United States.

We copy the question presented from the Government Brief, p. 1:

> "Whether it was error to refuse to allow defense counsel to inspect and use for cross examination a memorandum written by Government agents who had conferred with a witness for the prosecution, where such memorandum had not been signed by or exhibited to the witness and was not a substantially verbatim, contemporaneous recording of what the witness had said?"

We quote further from the Government Brief, p. 16:

> "Under the statutory procedure, a summary of prior oral statements prepared by the Government Agents, and which has not been approved by the witness, is not a 'statement' which must be produced for cross examination of such witness."

In the *De Lucia* case the witnesses for the Government had taken the stand. We infer from the circumstances in evidence that these witnesses had executed the document withheld by the Court.

We respectfully submit the certiorari should be granted in the case at bar, before decision in the previous cases.

We respectfully submit that other questions have been submitted to Your Honors upon which certiorari should be granted, for reasons heretofore stated in our petition.

Respectfully submitted,

WM. SCOTT STEWART,
Attorney for Petitioner.